
COMMONWEALTH OF MASSACHUSETTS

The Appeals Court

MIDDLESEX COUNTY

No. 2015-P-0048

ELAINE MURRAY and RUTH LEVENS,

Plaintiffs-Appellants,

v.

MASSACHUSETTS DEPARTMENT OF
CONSERVATION AND RECREATION

Defendant-Appellee

ON APPEAL FROM THE DECISION OF THE
LAND COURT DISMISSING PLAINTIFFS' ACTION

BRIEF OF THE APPELLANTS
ELAINE MURRAY and RUTH LEVENS

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STATEMENT OF THE ISSUE

Whether federal law bars Massachusetts courts from determining if rail service has been discontinued, and rail assets abandoned, on the former branch rail line in this case, as a predicate to determining the ultimate question of whether such discontinuance and abandonment has extinguished the disputed statutory easement thereon.

STATEMENT OF THE CASE

A. Nature of the Case

Appellants Elaine Murray and Ruth Levens (the "Owners") are owners of adjoining lots in Newton, the rear portions of which ("Disputed Parcels") include the remnants of the rail bed of an old rail line that operated between Wellesley and Riverside in Newton from approximately 1847 until May 1972 ("Branch Line"). The original rail operator, the Boston & Worcester Rail Road Company, had obtained a statutory easement solely to operate a railroad over the Disputed Parcels through a statutorily authorized procedure known as "location filing." The last rail company operating rail service on the Branch Line, Penn Central Company ("Penn Central"), discontinued rail service in 1972, some two years after it had filed for bankruptcy.

Because Congress determined that the Penn Central and other bankruptcies in the Northeast and Midwest threatened the viability of essential rail service in those regions, it passed the Regional Rail

Reorganization Act of 1973 ("3R Act")¹. The Act created the United States Railroad Association ("USRA") to oversee the reorganization of these bankrupt railroads, and to determine in a final system plan which of their rail assets were profitable and therefore appropriate for transfer to the then newly created Consolidated Rail Corporation ("CONRAIL"). The USRA did not designate the Branch Line for transfer to CONRAIL in the Final System Plan.

In 1982, some six years after the Final System Plan was filed and adopted by Congress, Penn Central executed a deed (the "Deed") which purported to transfer to the Commonwealth such interests as it possessed at that time in the Branch Line. That Deed however, was made expressly "subject to the covenant and restriction that no part of the [Branch Line] shall be used as, or made part of, a transportation, communication, electrical or other corridor or right of way." Appendix at 62. The Commonwealth wishes to construct thereon a bike and walking path.

The Owners brought this quiet title action contending that the statutory rail easements over the

¹ 45 U.S.C. §701 et seq.

Disputed Parcels have been extinguished because the sole purpose for which that statutory easement was granted, i.e., to operate a railroad, was now incapable of being achieved.

In dismissing the action, the Land Court concluded that Massachusetts courts have no jurisdiction to decide whether these statutory easements have been extinguished because the Surface Transportation Board (STB) (the federal agency empowered to authorize abandonments by rail carriers) has exclusive jurisdiction to determine the issue of Penn Central's abandonment of its Branch Line asset.

The Owners contend in this appeal that Massachusetts courts do have jurisdiction to decide the issue; and that the STB has no jurisdiction to determine the issues presented because there is no "rail carrier" involved in the case.

B. Prior Proceedings

As set forth in the Land Court's Decision (Appendix at 14-29), the Owners filed their initial Complaint on September 19, 2011, in response to which the Commonwealth filed a motion to dismiss. After a case management conference with the Court, the Owners amended their complaint on December 5, 2011, to seek a declaratory judgment, and the Commonwealth withdrew its motion.

On January 20, 2012, the Commonwealth filed a motion for judgment on the pleadings, arguing that the doctrine of sovereign immunity barred declaratory judgment actions against the Commonwealth. Ruling that suits addressed to the Commonwealth's title to land were immune from declaratory judgment actions, the Court gave the Owners leave to amend their complaint further, which they did, to state a cause of action to quiet title under G.L. c. 240, §§ 6-10.

In response, the Commonwealth, on May 22, 2012, filed another motion for judgment on the pleadings arguing immunity from suit under the quiet title statute. Following a hearing on June 27, 2012, the Court denied that motion, and instructed the parties

to complete discovery and ready the case for adjudication on the merits.

On June 17, 2013, the Owners filed a motion for summary judgment and on August 1, 2013, the Commonwealth filed an opposition and cross motion. The Owners filed a reply and an opposition to the Commonwealth's cross motion on August 13, 2013, and the Commonwealth filed a reply to that opposition on August 15, 2013.

The Court held a hearing on the cross motions for summary judgment on August 20, 2013. In response to the Commonwealth's argument that in the absence of a certificate of abandonment from the STB the Owners could not prove abandonment, the Court directed the parties to consider whether the United States or an agency thereof was a necessary party.

In a joint report filed September 10, 2013, the Owners contended that no federal party was necessary, and the Court should proceed to adjudication on the merits. The Commonwealth contended that the STB retained primary jurisdiction and the Court was not empowered to adjudicate the matter. Following a hearing on the joint report on October 11, 2013, the

Court gave the Owners time to complete their efforts to determine whether the federal government could locate any abandonment certificate related to the Branch Line. On January 30, 2014, they reported to the court that a search of the USRA records by the National Archive in Maryland, a search by the US Department of Transportation (where the STB is located), and a separate search by the STB itself, all turned up nothing.

In the wake of those events, the parties filed another joint report indicating their respective positions on how this absence of federal records should affect the pending summary judgment motions. The Owners contended that abandonment could be inferred from the Branch Line's history; and the Commonwealth contended that in the absence of a certificate of abandonment, abandonment cannot be demonstrated, and therefore the Owners' case must fail as a matter of law.

On October 6, 2014 the Court entered judgment dismissing the case for the reasons set forth in its Decision. On October 21, 2014 the Owners filed a motion asking the Land Court to clarify whether its

judgment meant that the Deed through which the Commonwealth claims its interest, in the absence of a certificate of abandonment, is unenforceable in Massachusetts. The Owners contended that, absent Penn Central having abandoned the line, it could not have transferred it to the Commonwealth subject to the covenant in the Deed. The Commonwealth opposed the Owners' motion arguing that the motion was untimely and, in the alternative, the motion was asking the Land Court to make a decision on the merits of the claim without subject matter jurisdiction.

On November 12, 2014 the Land Court denied The Owners' motion for clarification, stating that "[a]ny declaration the court could make regarding the validity or effect of the 1982 deed necessarily requires the court to determine whether or not the subject railroad rights have been abandoned, a determination the court is without jurisdiction to make." However, the Court said that, "[b]y denying this post-judgment motion, and leaving intact the judgment dismissing the action, the court in no manner makes any determination whether or not the Commonwealth possesses the rights it would need to proceed with any plans to use this portion of the

Owners' fee for bicycle or recreational trail purposes. The court's October 6, 2014 decision and judgment are to stand as issued."

On October 5, 2014 The Owners filed their appeal.

C. Statement of the Facts

The following facts were found by the Land Court to be undisputed and properly before it under Rule 56 (Decision at 5-7; Appendix at 18-20):

1. Boston and Worcester Railroad (B&W) was created in 1831, and in or around 1847 filed a "Plan of Location of the Newton Branch Railroad" with the Middlesex County Commissioners. The disputed property in this case is shown as part of the branch railroad depicted on the 1847 Plan of Location. The relevant part of the branch line was known as the Newton Lower Falls Branch (the Branch Line).
2. Penn Central succeeded to the B&W interest in the Branch Line.
3. In or about 1970, Penn Central filed for Bankruptcy.
4. Pursuant to the 3R Act, the USRA was tasked to develop a plan to determine which lines of railroad

would be transferred to CONRAIL, and which would not. The result of the USRA's work was the publication of the Final System Plan on July 26, 1975.

5. Final System Plan records that the Branch Line's date of last use was May 30, 1972.

6. As of June 26, 1975, there was a pending application under §304(f) of the 3R Act to abandon the Branch Line.

7. In 1976 Penn Central (or its successor or agent) began to remove the rails along the Branch Line.

8. By the 1982 Deed, Penn Central transferred to the Commonwealth all its interest in the Branch Line.

ARGUMENT

A. Federal Law Does Not Deprive the Land Court of Jurisdiction

Federal law does not preempt state court jurisdiction with respect to any of the issues in this case. By 1982, the date of the Deed, all constraints on Penn Central's freedom to dispose of its interests in the Branch line had expired. Moreover, because neither Penn Central nor any of the parties in this

case is a rail carrier, the STB is and always has been without jurisdiction to regulate any of matters related to this action.

The Land Court's conclusion that it has no jurisdiction to rule on the merits of this case is premised on two conclusions: (1) that the 3R Act prohibited Penn Central from abandoning service or assets on the Branch Line without federal approval, and (2) that the federal approval required must come from the STB. See Decision at 11-17; Appendix at 24-29. Said the court: "the weight of the federal statutes and cases is that a state court cannot render a judgment finding an abandonment (or no abandonment) of a railroad line over which the STB has authority. It is the STB which must hear the parties and issue a decision." Decision at 16 (fn. 16); Appendix at 28. Both these conclusions conflict with federal law.

**B. STB has no Jurisdiction to Determine
Abandonment in this Case**

In creating the STB², Congress confined its rail transportation jurisdiction to "rail carriers"³. That term is defined in 49 U.S.C. § 10102(5) as "a person providing common carrier railroad transportation for compensation, but does not include street, suburban, or interurban electric railways not operated as part of the general system of rail transportation." Emphasis added.

The jurisdiction of the STB is expressly limited therefore to the activities of persons providing common carrier railroad transportation for compensation. While 49 U.S.C. § 10501(b)(2) provides that that jurisdiction includes "exclusive" jurisdiction over abandonments" that abandonment jurisdiction also is expressly limited to abandonments by "rail carriers." Id.

² 49 U.S.C. § 701.

³ 49 U.S.C. § 10501(a)(1) ("Subject to this chapter, the Board has jurisdiction over transportation by rail carrier that is (A) only by railroad; or (B) by railroad and water, when the transportation is under common control, management, or arrangement for a continuous carriage or shipment.").

No rail carrier has operated the Branch Line for the last 43 years, and given the covenant in the Deed prohibiting such operations thereon, no one ever will. Moreover, there was no evidence before the Land Court from which it could reasonably conclude that any of the parties in this action or that Penn Central itself is "a person providing common carrier railroad transportation for compensation." Consequently, the STB has no jurisdiction over any of the issues in this case.

The STB itself has insisted that in the absence of rail carrier involvement in a controversy, it has no jurisdiction to act. In Grafton and Upton Railroad Company v. Town of Milford, 417 F.Supp.2d 171 (D. Mass. 2006), the railroad company (Grafton), in a revitalization effort, proposed to develop a facility in Milford in conjunction with the Boston Railway Terminal Corporation ("BRT"). BRT was a terminal railroad company that operated a rail line over a fixed, limited distance for the singular purpose of moving freight within an industrial complex. Milford took the position that the proposed BRT development was unlawful because it violated its Zoning By-Laws and the Massachusetts Wetlands Protection Act.

Grafton took the position that state law was preempted by STB jurisdiction.

When this disagreement could not be resolved, Milford petitioned the STB for an order that the proposed development was prohibited by Massachusetts law. The STB unanimously denied Milford's petition on the ground that "it lacked jurisdiction to enter the order because BRT is not a rail carrier and, therefore, not within STB jurisdiction." 417 F.Supp.2d at 173. Said the Court, "If BRT is not a rail carrier, federal preemption does not apply" Id. In its analysis of the STB's decision, the District Court pointed out that the STB had concluded that while Grafton would be protected by STB preemption in its transportation of rail cars to and from the proposed facility, BRT's activities, not being those of a rail carrier, were beyond its jurisdiction. See Id. At 175-176.

Contrary to the conclusion of the Land Court, it is neither obvious nor correct that Congress has given exclusive authority over the abandonment issue in this case to the STB. See Decision at 15; Appendix at 27. ("The inability of a state court to step in and

adjudicate a matter committed by Congress to the exclusive jurisdiction of a federal authority, the STB, should be even more obvious." Emphasis in original.)

The cases cited by the Land Court in support of its conclusion as to the STB's exclusive jurisdiction in this case are all cases involving abandonment on lines operated by rail carriers. For example, Caldwell v. United States, 391 F.3d 1226 (Fed. Cir. 2004) involved the date of accrual of a Fifth Amendment takings claim for purposes of the statute of limitations in the Tucker Act, in the context of ongoing negotiations between a rail carrier and a "trail operator." The passage cited by the Land Court is from a general description of how the process of "rail banking" works. The railroad involved in Caldwell, the Norfolk Southern Railway Company, was operating a railroad in Georgia and plainly a rail carrier as defined by 49 U.S.C.

§ 10102(5) (and therefore within the jurisdiction of the STB); and had filed a request for an exemption under 49 U.S.C. § 10502 to abandon 7.4 miles of its railroad line. No railroad subject to the jurisdiction of the STB is involved in our case; indeed, the Branch

Line is not even a "railroad" subject to STB jurisdiction because it is not a "road used by a rail carrier." See 49 U.S.C. § 10102(6). Consequently, the Land Court's conclusion that the STB has exclusive jurisdiction in this case is not supported by applicable federal law.

Consolidated Rail Corporation v. Interstate Commerce Commission, 29 F.3d 706 (D.C. Cir. 1994) is also not pertinent. It is not a case involving USRA reorganization under the 3R Act, and also involved a rail carrier.

Parenthetically, the case brought by the Owners is not one of "adverse abandonment" case. As explained by the court in Consolidated Rail Corporation v. ICC, adverse abandonment cases are those in which a municipality or landowner is trying to obtain an abandonment determination in the face of the rail carrier's desire to continue rail service. 29 F.3d at 708 ("In an adverse abandonment the carrier wants to continue service.") There, the STB had jurisdiction because there was a rail carrier, namely CONRAIL, that opposed abandonment "ostensibly because

it hope[d] to provide service over the line." 29 F.3d at 709.

No such situation exists on the Branch Line because (1) there is no rail carrier involved, and (2) no evidence of a desire on the part of anyone to continue rail service on it; and, of course, such rail service is expressly prohibited by the Deed.

The Land Court is plainly correct, citing Jersey City v. Consolidated Rail Corporation, 741 F.Supp.2d 131 (Dist. D.C. 2010), that a municipality cannot condemn rail property subject to STB's abandonment authority. Decision at 13; Appendix at 25. However, the Branch Line is not subject to the STB's abandonment authority because it is not operated by a rail carrier, and has not been so operated for the last 43 years.

The Owners believe that the Land Court's statement in its Decision that "there plainly was an application to the STB to abandon the subject railway," and further that "[t]his court is being asked to determine what action, if any, has been taken by the STB," are inadvertent misstatements. The STB was not in existence at the time of the Penn Central

Final System Plan⁴, to which the Owners believe the Land Court was referring. See Decision at 13-14; Appendix at 25-26.

In light of the above, the STB has no jurisdiction to adjudicate the issues and events involved in this case, including Penn Central's discontinuance of rail service and abandonment of the Branch Line itself.

C. Section 304 of the 3R Act Does Not Deprive Massachusetts Courts of Jurisdiction

Section 304 of the 3R Act, is the principal statute relied upon by the Land Court in holding that it lacks jurisdiction in this case. However, there is no provision in that section of the Act that deprives the Land Court of jurisdiction to determine whether the statutory easement over the Disputed Parcels has been extinguished.

Section 304 contains the "TERMINATION OF RAIL SERVICE" provisions of the 3R Act. It deals with both discontinuance and abandonment by railroads in

⁴ The Surface Transportation Board came into being on January 1, 1996. 49 U.S.C. § 701. The abandonment request referenced in the Final System Plan was pending in 1975.

reorganization. "Discontinuance" is the word applied therein to termination of rail service; and "abandonment" to refer to cessation in the sense of discarding of assets once employed in providing rail service. Subsections (a) - (e) deal with discontinuance of service and abandonment of rail lines once a railroad in reorganization has transferred all or substantially all its profitable assets to CONRAIL. Subsection (f) deals with "interim" discontinuances of service and rail asset abandonments, i.e., those occurring after the date of the 3R Act but before the effective date of the Final System Plan.

As the Supreme Court explained in the Regional Rail Reorganization Act Cases, 419 U.S. 102 (1974), once the Final System Plan became effective, railroads in reorganization were free to abandon service and dispose of assets as they wished; only during the interim, between passage of the Act and the effective date of the Plan was permission from the USRA required:

Although railroads in reorganization subject to the [3R] Act are free to abandon service and dispose as they wish of any rail properties not designated for transfer under

the Final System Plan, §§ 774(a)-(c) (1970 ed., Supp. III), until that Plan becomes effective none "may discontinue service or abandon any line of railroad . . . unless . . . authorized to do so by the [USRA] and unless no affected State or local or regional transportation authority reasonably opposes such action" §304(f).

419 U.S. at 116-117.

§ 209 of the 3R Act provides that after review by Congress the Final System Plan becomes effective "under § 208." Section 208 provides that the Plan shall be deemed approved at the end of the "first 60 calendar days of continuous session of Congress after the date of transmittal to Congress [July 26, 1975]." According to the website of the United States Senate, the First Session of the 94th Congress began on January 14, 1975 and was adjourned on December 19, 1975 and the Second Session began on January 19, 1976 and was adjourned on October 1, 1976. The computation provisions of § 208(c) provide that (1) continuity of a session is broken only by an adjournment sine die, and (2) "adjournments of more than 3 days to a day certain are excluded in the computation of the 60-day period. The Owners have not attempted to determine precisely when those 60 days expired, but are

confident in suggesting to this Court that those 60 days expired at some point during the more than seven years between July 26, 1975 and December, 1982 when the transaction memorialized in the Deed closed.

Subsection 304(a), relating specifically to discontinuance of service after transfer of profitable assets pursuant to the final System Plan, is not material here because, as the Final System Plan records, Penn Central discontinued service on the Branch Line in May 1972, more than one and a half years prior to the enactment of the 3R Act. Plainly, because it predates the 3R Act, that discontinuance of service is beyond the scope of § 304.

Section 304 (b), expressly dealing with abandonment of "[r]ail properties over which rail service has been discontinued under subsection (a) of this section," also has no relevance to discontinuance of service on the Branch Line which was pre Act and therefore was not "discontinued under subsection (a)" of the Act.

Subsection 304(c) expressly states that it applies to service discontinued and properties abandoned, under the aforementioned subsections (a)

and (b), and to discontinuances and abandonments by recipients of rail continuation subsidies. Rail service on the Branch Line, as explained above, was not discontinued under subsections (a) or (b), nor were any rail service continuation subsidies involved with respect to the Branch Line.

Section 304(d) relates to offers to purchase accompanied by an offer of a rail service continuation subsidy, which was not offered in connection with the Branch Line. Section 304(e) relates to abandonments by CONRAIL, again not involved here.

As to §304(f), dealt with above, it constraints on interim abandonments expired on the effective date of the Final System Plan. Regional Rail Reorganization Act Cases, 419 U.S. 102, 116-117 (1974).

Congress passed the 3R Act to stave off the threat of a collapse of the rail system in the Northeast and the Midwest resulting from the bankruptcies of its rail carriers. 3R Act § 101; 45 U.S.C. § 701. One of the primary functions of the USRA was to harvest the profitable assets of these bankrupt carriers, and to transfer them to the newly

created CONRAIL. As the Court explained in City of Philadelphia v. Consolidated Rail Corporation, 222 F.3d 990, 992 (D.C. Cir. 2000): "The Rail Act [the 3R Act] created the United States Railway Association, see 45 U.S.C. s 711(a), a non-profit corporation, which in turn prepared a Final System Plan ("FSP") which designated how rail properties held by the bankrupt railroads would be distributed, see 45 U.S.C. s 716."

In passing the Railroad Revitalization and Regulatory Reform Act of 1976, Congress declared that "It is the purpose of Congress in this Act to . . . assure . . . implementation of the final system plan" 45 USC § 801(a)(3). In adopting the Plan, Congress closed the book on the federal government's interest in the unprofitable rail assets that remained in the hands of the bankrupt carriers such as Penn Central. See, Regional Rail Reorganization Act Cases, 419 U.S. 102, 116-117 (1974). Indeed, the Regional Rail Reorganization Act Cases make clear that after the effective date of the Final System Plan, Penn Central was free to transfer its interest in the Branch Line (not having been designated for transfer to CONRAIL) to the Commonwealth, without the necessity

of asking permission from the USRA or any federal rail authority.

Manifestly, there is no lack of jurisdiction in the Land Court to determine the effect of the 1982 Deed, including its covenant barring use of the Branch Line rail bed for rail service, on the extinguishment of the statutory easements contested in this case.

Conclusion

For all the reasons set forth above, this Court should allow the Owners' appeal, and return this action to the Land Court for determination of the cross motions for summary judgment on the merits.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE

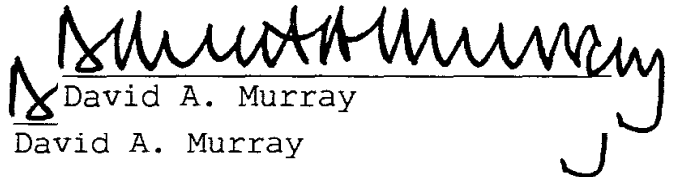
I, David A. Murray, hereby certify that on this 23rd day of February, 2015, this Brief and associated Appendix, comply with all relevant Rules of Appellate Procedure, including but not limited to Mass. R.A.P. 16 (6) (pertinent findings or memorandum of decision); Mass. R.A.P. 16(e) (references to the record); Mass. R.A.P. 16(f) (reproduction of statutes, rules, regulations); Mass. R.A.P. 16(h) (length of briefs); Mass. R.A.P. 18 (Appendix to the briefs) and Mass. R.A.P. 20 (form of briefs, appendices and other papers).



David A. Murray
Attorney for Plaintiffs

Certificate of Service

I, David A. Murray, hereby certify that on this 23rd day of February, 2015, I served upon the Commonwealth of Massachusetts the foregoing Appellants' Appeal Brief and the accompanying Record Appendix by hand delivering true copies thereof to the Office of the Attorney General at One Ashburton Place, Boston, MA 02108.


David A. Murray
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ADDENDUM

Sec.

 SUBCHAPTER II—UNITED STATES RAILWAY

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- 711. Formation and structure.
- 712. Functions of Association.
- 713. Access to information.
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SUBCHAPTER I—GENERAL PROVISIONS

§ 701. Congressional declaration of policy

(a) Findings

The Congress finds and declares that—

(1) Essential rail service in the midwest and northeast region of the United States is provided by railroads which are today insolvent and attempting to undergo reorganization under the Bankruptcy Act.

(2) This essential rail service is threatened with cessation or significant curtailment be-

cause of the inability of the trustees of such railroads to formulate acceptable plans for reorganization. This rail service is operated over rail properties which were acquired for a public use, but which have been permitted to deteriorate and now require extensive rehabilitation and modernization.

(3) The public convenience and necessity require adequate and efficient rail service in this region and throughout the Nation to meet the needs of commerce, the national defense, the environment, and the service requirements of passengers, United States mail, shippers, States and their political subdivisions, and consumers.

(4) Continuation and improvement of essential rail service in this region is also necessary to preserve and maintain adequate national rail services and an efficient national rail transportation system.

(5) Rail service and rail transportation offer economic and environmental advantages with respect to land use, air pollution, noise levels, energy efficiency and conservation, resource allocation, safety, and cost per ton-mile of movement to such extent that the preservation and maintenance of adequate and efficient rail service is in the national interest.

(6) These needs cannot be met without substantial action by the Federal Government.

(b) Purposes

It is therefore declared to be the purpose of Congress in this chapter to provide for—

(1) the identification of a rail service system in the midwest and northeast region which is adequate to meet the needs and service requirements of this region and of the national rail transportation system;

(2) the reorganization of railroads in this region into an economically viable system capable of providing adequate and efficient rail service to the region;

(3) the establishment of the United States Railway Association, with enumerated powers and responsibilities;

(4) the establishment of the Consolidated Rail Corporation, with enumerated powers and responsibilities;

(5) assistance to States and local and regional transportation authorities for continuation of local rail services threatened with cessation; and

(6) necessary Federal financial assistance at the lowest possible cost to the general taxpayer.

(Pub. L. 93-236, title I, § 101, Jan. 2, 1974, 87 Stat. 986.)

REFERENCES IN TEXT

The Bankruptcy Act, referred to in subsec. (a)(1), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which was classified generally to former Title 11, Bankruptcy. The Act was repealed effective Oct. 1, 1979, by Pub. L. 95-598, §§ 401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11. For current provisions relating to railroad reorganization, see subchapter IV (§ 1161 et seq.) of chapter 11 of Title 11.

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95-565, § 1, Nov. 1, 1978, 92 Stat. 2397, provided: "That this Act [amending sections 726, 747, and 825 of

this title and section 975 of Title 43, Public Lands, and enacting provision set out as a note under section 975 of Title 43] may be cited as the 'United States Railway Association Amendments Act of 1978'."

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94-555, title II, § 201, Oct. 19, 1976, 90 Stat. 2616, provided that: "This title [amending sections 702, 711, 716, 720, 721, 743, 744, 771, 774, 775, 779, 823, 824, 825, 826, 829, 831, and 854 of this title, section 960 of Title 20, Education, sections 1a, 5, 5c, 13, 15, 17, 22, 26c, and 1853 of former Title 49, Transportation, and enacting provisions set out as notes under section 80a-3 of Title 15, Commerce and Trade, and sections 1a and 1654 of former Title 49] may be cited as the 'Rail Amendments of 1976'."

SHORT TITLE OF 1975 AMENDMENT

Pub. L. 94-5, § 1, Feb. 28, 1975, 89 Stat. 7, provided: "That this Act [enacting section 794 of this title and amending sections 712, 715, 716, 717, 721, 723, 725, and 743 of this title] may be cited as the 'Regional Rail Reorganization Act Amendments of 1975'."

SHORT TITLE

Section 1 of Pub. L. 93-236 provided in part that this Act [enacting this chapter and amending section 856 of former Title 31, Money and Finance, and section 1(16) of former Title 49, Transportation], may be cited as the "Regional Rail Reorganization Act of 1973".

SEPARABILITY

Section 804 of Pub. L. 93-236 provided that: "If any provision of this Act [enacting this chapter and amending section 856 of former Title 31, Money and Finance, and section 1(16) of former Title 49, Transportation] or the application thereof to any person or circumstances is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby."

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

§ 702. Definitions

As used in this chapter, unless the context otherwise requires—

- (1) "Association" means the United States Railway Association, established under section 711 of this title;
- (2) "Commission" means the Interstate Commerce Commission;
- (3) "Commuter authority" means any State, local, or regional authority, corporation, or other entity established for purposes of providing commuter service, and includes the Metropolitan Transportation Authority, the Connecticut Department of Transportation, the Maryland Department of Transportation, the Southeastern Pennsylvania Transportation Authority, the New Jersey Transit Corporation, the Massachusetts Bay Transportation Authority, the Port Authority Trans-Hudson Corporation, any successor agencies, and any entity created by one or more such agencies for the purpose of operating, or contracting for the operation of, commuter service;
- (4) "Commuter service" means short-haul rail passenger service operated in metropolitan and suburban areas, whether within or across the geographical boundaries of a State, usually characterized by reduced fare, mul-

ti-ride, and commutation tickets, and by morning and evening peak period operations;

(5) "Corporation" means the Consolidated Rail Corporation required to be established under section 741 of this title or its successor by merger, consolidation or other form of succession carried out under applicable law for the purpose of changing the State of its incorporation;

(6) "effective date of the final system plan" means the date on which the final system plan or any revised final system plan is deemed approved by Congress, in accordance with section 718 of this title;

(7) "employee stock ownership plan" means a technique of corporate finance that uses a stock bonus trust or a company stock money purchase pension trust which qualifies under section 401(a) of title 26 in connection with the financing of corporate improvements, transfers in the ownership of corporate assets, and other capital requirements of a corporation and which is designed to build beneficial equity ownership of shares in the employer corporation into its employees substantially in proportion to their relative incomes, without requiring any cash outlay, any reduction in pay or other employee benefits, or the surrender of any other rights on the part of such employees;

(8) "final system plan" means the plan of reorganization for the restructure, rehabilitation, and modernization of railroads in reorganization prepared pursuant to section 716 of this title and approved pursuant to section 718 of this title;

(9) "Finance Committee" means the Finance Committee of the Board of Directors of the Association established under section 711(i)¹ of this title;

(10) "includes" and variants thereof should be read as if the phrase "but is not limited to" were also set forth;

(11) "local or regional transportation authority" includes a political subdivision of a State;²

(12) "Office" means the Rail Services Planning Office established under section 10361² of title 49;

(13) "profitable railroad" means a railroad which is not a railroad in reorganization. The term does not include the Corporation, the National Railroad Passenger Corporation, or a railroad leased, operated, or controlled by a railroad in reorganization in the region;

(14) "rail properties" means assets or rights owned, leased, or otherwise controlled by a railroad (or a person owned, leased, or otherwise controlled by a railroad) which are used or useful in rail transportation service; except that the term, when used in conjunction with the phrase "railroads leased, operated, or controlled by a railroad in reorganization", shall not include assets or rights owned, leased, or otherwise controlled by a Class I railroad which is not wholly owned, operated, or leased by a railroad in reorganization but is controlled by a railroad in reorganization;

¹ See References in Text note below.

² So in original. The period probably should be a semicolon.

Par. (8). Pub. L. 94-210, §§ 601(g), 603(c), redesignated former par. (7) as (8). Former par. (8) redesignated (10).

Pars. (9) to (11). Pub. L. 94-210, § 601(g), added par. (9) and redesignated former pars. (8) and (9) as (10) and (11), respectively. Former pars. (10) and (11) redesignated (12) and (13), respectively.

Par. (12). Pub. L. 94-210, §§ 601(g), 607(t), redesignated former par. (10) as (12), inserted "(or a person owned, leased, or otherwise controlled by a railroad)" before "which are used or useful", and substituted "phrase" for "phase". Former par. (12) redesignated (14).

Pars. (13) to (15). Pub. L. 94-210, § 601(g), redesignated former pars. (11) to (13) as (13) to (15) respectively. Former pars. (13) to (15) redesignated (15) to (17) respectively.

Par. (16). Pub. L. 94-555 substituted ", in his absence, the Deputy Secretary of Transportation" for "the duly authorized representative of either of them" after "accordance with law, or".

Pub. L. 94-210, §§ 601(f), (g), 610(a)(1), redesignated former par. (14) as (16) and substituted provisions relating to the person at the time performing the duties of the Office in accordance with the law, or the duly authorized representative of such person or the Secretary, for provisions relating to the delegate of the Secretary, unless the context indicated otherwise.

Par. (17). Pub. L. 94-210, §§ 601(g), 610(a)(2), redesignated former par. (15) as (17) and substituted a semicolon for a period.

Pars. (18), (19). Pub. L. 94-210, § 610(a)(3), added pars. (18) and (19).

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, see section 1169 of Pub. L. 97-35, set out as an Effective Date note under section 1101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-448 effective Oct. 1, 1980, see section 710(a) of Pub. L. 96-448, set out as a note under section 1170 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 303 of Pub. L. 94-555 provided that: "The provisions of this Act and the amendments made by this Act [amending this section, sections 543, 545, 546, 563, 601, 602, 641, 711, 716, 720, 721, 743, 744, 771, 774, 775, 779, 823, 824, 825, 826, 829, 831, and 854 of this title, section 960 of Title 20, Education, and sections 1a, 5, 5c, 13, 15, 17, 22, 26c, and 1653 of former Title 49, Transportation, and enacting provisions set out as notes under sections 501, 641, 701, and 714 of this title, section 80a-3 of Title 15, Commerce and Trade, and sections 1a and 1654 of former Title 49] shall take effect on October 1, 1976."

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104-88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104-88, set out as a note under section 701 of Title 49.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

Application of National Environmental Policy Act to actions of Commission not affected by title VI of Pub. L. 94-210, see section 619 of Pub. L. 94-210, set out as a note under section 791 of this title.

SUBCHAPTER II—UNITED STATES RAILWAY ASSOCIATION

§ 711. Formation and structure

(a) Establishment

There is established, in accordance with the provisions of this section, an incorporated nonprofit association to be known as the United States Railway Association.

(b) Administration

The Association shall be directed by a Board of Directors. The individuals designated, pursuant to subsection (d)(2) of this section, as the Government members of such Board shall be deemed the incorporators of the Association and shall take whatever steps are necessary to establish the Association, including filing of articles of incorporation, and serving as an acting Board of Directors for a period of not more than 45 days after the date of incorporation of the Association.

(c) Status

The Association shall be a government corporation of the District of Columbia subject, to the extent not inconsistent with this subchapter, to the District of Columbia Nonprofit Corporation Act. Except as otherwise provided, employees of the Association shall not be deemed employees of the Federal Government. The Association shall have succession until dissolved by Act of Congress, shall maintain its principal office in the District of Columbia, and shall be deemed to be a resident of the District of Columbia with respect to venue in any legal proceeding.

(d) Board of Directors

(1) The Board of Directors of the Association shall consist of five individuals, as follows:

(A) The Chairman, who shall be the individual serving as Chairman on August 13, 1981, until the expiration of his term of office or his resignation, or his replacement, who shall be selected by the outgoing Chairman and the other members of the Board.

(B) The Secretary of Transportation.

(C) The Comptroller General of the United States.

(D) The Chairman of the Commission.

(E) The Chairman of the Board of Directors of the Corporation.

(2) The Chairman may not have any employment or other direct financial relationship with any freight railroad. The Chairman shall receive \$300 per diem when engaged in the actual performance of his duties plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

(e) Term of office

The term of office of the Chairman of the Board of Directors of the Association shall ex-

pire on December 31, 1987. The Chairman may be reappointed and the term of the Chairman shall be 3 years.

(f) Quorum

Three members of the Board of Directors, or their representatives, shall constitute a quorum for the transaction of any function of the Association.

(g) Assumption of Finance Committee functions

The Board of Directors shall, on August 13, 1981, assume the functions previously performed by the Finance Committee.

(h) Representation at meetings

The members of the Board of Directors may send representatives to meetings of such Board, and such representatives may exercise full powers of the members.

(i) Miscellaneous¹

(1) The Association shall have a seal which shall be judicially recognized.

(2) The Administrator of General Services shall furnish the Association with such offices, equipment, supplies, and services as he is authorized to furnish to any other agency or instrumentality of the United States.

(3) The Secretary is authorized to transfer to the Association or the Corporation rights in intellectual property which are directly related to the conduct of the functions of the Association or the Corporation, to the extent that the Federal Government has such rights and to the extent that transfer is necessary to carry out the purposes of this chapter.

(4) Any reference in this chapter to the Chairman of the Commission is to the Chairman of the Commission or the person who is at the time performing the duties of the Chairman of the Commission in accordance with law.

(j) Use of names¹

No person, except the Association, shall hereafter use the words "United States Railway Association" as a name for any business purpose. Violations of this provision may be enjoined by any court of general jurisdiction in an action commenced by the Association. In any such action, the Association may recover any actual damages flowing from such violation, and, in addition, shall be entitled to punitive damages (regardless of the existence or nonexistence of actual damage) in an amount not to exceed \$100 for each day during which such violation was committed. The district courts of the United States shall have jurisdiction over actions brought under this subsection, without regard to the amount in controversy or the citizenship of the parties.

(Pub. L. 93-236, title II, § 201, Jan. 2, 1974, 87 Stat. 988; Pub. L. 94-210, title VI, §§ 603(a), (b), 607(a), 612(j)(2), Feb. 5, 1976, 90 Stat. 88, 96, 109; Pub. L. 94-555, title II, § 211(b)-(e), Oct. 19, 1976, 90 Stat. 2624; Pub. L. 95-611, § 2, Nov. 8, 1978, 92 Stat. 3089; Pub. L. 96-448, title V, § 508(c), Oct. 14, 1980, 94 Stat. 1957; Pub. L. 97-35, title XI, § 1147, Aug. 13, 1981, 95 Stat. 673; Pub. L. 98-181, title II, § 2003(c)(1), Nov. 30, 1983, 97 Stat. 1297; Pub. L.

99-190, § 101(e) [title III, § 332], Dec. 19, 1985, 99 Stat. 1267, 1290.)

REFERENCES IN TEXT

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (c), is Pub. L. 87-569, Aug. 6, 1962, 76 Stat. 265, as amended, which is not classified to the Code.

CODIFICATION

Section 1147 of Pub. L. 97-35 directed that subssecs. (d) to (i) be struck out and replaced by new subssecs. (d) to (h), and that subssecs. (j) and (k) be redesignated (g) and (h), respectively. Because a literal execution of the amendment would result in two subsections designated (g) and two subsections designated (h), and to reflect the probable intent of Congress, subssecs. (j) and (k) have been editorially redesignated (i) and (j), respectively.

AMENDMENTS

1985—Subsec. (d)(2). Pub. L. 99-190, § 101(e) [title III, § 332(1)], inserted "freight" before "railroad".

Subsec. (e). Pub. L. 99-190, § 101(e) [title III, § 332(2)], substituted "1987" for "1985".

1983—Subsec. (e). Pub. L. 98-181 substituted "1985" for "1983".

1981—Subsec. (d). Pub. L. 97-35 substituted provisions respecting a five-member board for provisions respecting an eleven-member board.

Subsec. (e). Pub. L. 97-35 substituted provisions respecting term of office and reappointment of Chairman for provisions respecting term of office of Chairman and nongovernmental members, reappointment of members, and vacancies.

Subsec. (f). Pub. L. 97-35 substituted provisions respecting three-member quorum requirement for provisions respecting six-member quorum requirement.

Subsec. (g). Pub. L. 97-35 substituted provisions relating to assumption of Finance Committee functions for provisions relating to appointment of the President of the Association. See Codification note above.

Subsec. (h). Pub. L. 97-35 substituted provisions relating to representation at meetings for provisions relating to the executive committee of the Board of Directors. See Codification note above.

Subsec. (i). Pub. L. 97-35 redesignated subsec. (j) as (i). Former subsec. (i), which related to membership, functions, etc., of the Finance Committee, was struck out. See Codification note above.

Subsecs. (j), (k). Pub. L. 97-35 redesignated former subssecs. (j) relating to miscellaneous provisions, and (k) relating to use of names, as (i) and (j), respectively. See Codification note above.

1980—Subsec. (d)(2). Pub. L. 96-448, § 508(c)(1), inserted provision authorizing Secretary of Transportation to act directly or through the General Counsel of Department of Transportation, the Federal Railroad Administrator, or the Deputy Administrator of the Federal Railroad Administration and substituted provision authorizing Secretary of the Treasury to act directly or through an officer of Department of the Treasury who has been appointed with the advice and consent of the Senate for provision authorizing Secretary of the Treasury to act directly or through Deputy Secretary of the Treasury.

Subsec. (i). Pub. L. 96-448, § 508(c)(2), substituted "in the case of the Secretary, through the Deputy Secretary of Transportation, the General Counsel of the Department of Transportation, the Federal Railroad Administrator, or the Deputy Administrator of the Federal Railroad Administration, and, in the case of the Secretary of the Treasury, through an officer of the Department of the Treasury who has been appointed with the advice and consent of the Senate" for "through their respective Deputy Secretaries".

Subsec. (j)(4). Pub. L. 96-448, § 508(c)(3), struck out provision that any reference in this chapter to Secretary of the Treasury is to Secretary of the Treasury

¹ See Codification note below.

or person who is at time performing duties of the Office of Secretary of the Treasury or, in his absence, Deputy Secretary of the Treasury.

1978—Subsec. (e). Pub. L. 95-611 inserted provision that members of Board shall continue to serve until their successors have been appointed and qualified.

1976—Subsec. (d)(2). Pub. L. 94-555, §211(b), substituted "the Deputy Secretary of Transportation, the Vice Chairman of the Commission, or the Deputy Secretary of the Treasury, as the case may be" for "their duly authorized representatives" after "at any time through".

Pub. L. 94-210, §603(b)(2), substituted "acting directly or at any time through" for "or".

Subsec. (h). Pub. L. 94-555, §211(c), struck out "The Secretary and the Chairman of the Commission may act in such capacity directly or at any time through their duly authorized representatives" after "members of the Board".

Pub. L. 94-210, §603(b)(1), inserted provision authorizing Secretary and Chairman to act directly or through their duly authorized representatives.

Subsec. (i). Pub. L. 94-555, §211(d), substituted "Deputy Secretaries" for "duly authorized representatives" after "through their respective".

Pub. L. 94-210, §603(a), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 94-210, §§603(a), 607(a), redesignated former subsec. (i) as (j) and added par. (4). Former subsec. (j) redesignated (k).

Subsec. (j)(4). Pub. L. 94-555, §211(e), inserted "who is" after "Treasury or the person" and "Commission or the person", and substituted "in his absence, the Deputy Secretary of the Treasury" for "the duly authorized representatives of either of them" after "Treasury in accordance with law".

Subsec. (k). Pub. L. 94-210, §§603(a), 612(j)(2), redesignated former subsec. (j) as (k), substituted "this provision" for "these provisions", and struck out "or the Corporation" after "Association" in two places and provisions relating to use of "Consolidated Rail Corporation" as a name for any business purpose.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, see section 1169 of Pub. L. 97-35, set out as an Effective Date note under section 1101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-448 effective Oct. 1, 1980, see section 710(a) of Pub. L. 96-448, set out as a note under section 1170 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-555 effective Oct. 1, 1976, see section 303 of Pub. L. 94-555, set out as a note under section 702 of this title.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104-88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104-88, set out as a note under section 701 of Title 49.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

Application of National Environmental Policy Act to actions of Commission not affected by title VI of Pub.

L. 94-210, see section 619 of Pub. L. 94-210, set out as a note under section 791 of this title.

§ 712. Functions of Association

(a) General

The Association is authorized to—

(1) monitor the financial performance of the Corporation;

(2) review whether the goals and requirements of this chapter are met;

(3) purchase or otherwise acquire or receive, and hold and dispose of securities (whether debt or equity) of the Corporation under sections 726 and 727 of this title and exercise all of the rights, privileges, and powers of a holder of any such securities;

(4) purchase accounts receivable of the Corporation in accordance with section 727 of this title;

(5) appoint and fix the compensation of such personnel as the Association considers necessary and appropriate; and

(1)¹ determine the value of the Alaska Railroad, as required by section 1204 of this title.

(b) Investment of funds

Uncommitted funds of the Association shall be kept in cash on hand or on deposit, or invested in obligations of the United States or guaranteed thereby, or in obligations, participations, or other investments which are lawful investments for fiduciary, trust, or public funds.

(c) Exemption from taxation

The Association, including its franchise, capital reserves, surplus, security holdings, and income shall be exempt from all taxation now or hereafter imposed by the United States, any commonwealth, territory, dependency, or possession thereof, or by any State or political subdivision thereof, except that any real property of the Association shall be subject to taxation to the same extent according to its value as other real property is taxed.

(d) Reports

(1)² The Association shall transmit to the Congress and the President, not later than 90 days after the end of each fiscal year, a comprehensive and detailed report on all activities of the Association during the preceding fiscal year. Each such report shall include (A) the Association's statement of specific and detailed objectives for the activities and programs conducted and assisted under this chapter; (B) statements of the Association's conclusions as to the effectiveness of such activities and programs in meeting the stated objectives and the purposes of this chapter, measured through the end of the preceding fiscal year; (C) recommendations with respect to any legislation or administrative action which the Association deems necessary or desirable; (D) a statistical compilation of the obligations issued, certificates of value issued, securities purchased, and loans made under this chapter; (E) a summary of outstanding problems confronting the Association, in order of priority; (F) all other information required to be submitted to the Congress pursuant to any other provi-

¹ So in original. Probably should be "(6)".

² Par. "(1)" designation supplied editorially.

1976—Subsec. (a)(2). Pub. L. 94-210, §601(c), inserted provisions relating to securities under section 726 of this title and certificates of value under section 746 of this title.

Subsec. (e). Pub. L. 94-210, §607(b), in cl. (4) inserted “, certificates of value issued, securities purchased,” after “obligations issued”.

Subsec. (f). Pub. L. 94-210, §607(c), inserted provisions relating to receipts and disbursements under sections 726 and 746 of this title.

1975—Subsec. (b)(2). Pub. L. 94-5, §2(a)(1), inserted “and express” after “rail” wherever appearing.

Subsec. (b)(7). Pub. L. 94-5, §2(a)(2), substituted “; and” for a period at end of par. (7).

Subsec. (b)(8). Pub. L. 94-5, §2(a)(3), added par. (8).

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, see section 1169 of Pub. L. 97-35, set out as an Effective Date note under section 1101 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-73 effective Oct. 1, 1979, see section 501(a) of Pub. L. 96-73.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which reports required under subsecs. (d)(1), (3), (e), and (f) of this section are listed as the 3rd through 6th items on page 195), see section 3003 of Pub. L. 104-66, as amended, and section 1(a)(4) [div. A, §1402(1)] of Pub. L. 106-554, set out as notes under section 1113 of Title 31, Money and Finance.

ABOLITION OF SPECIAL COURT, REGIONAL RAIL REORGANIZATION ACT OF 1973, AND TRANSFER OF FUNCTIONS

Special court abolished and all jurisdiction and functions transferred to United States District Court for District of Columbia, see section 719(b)(2) of this title.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

Application of National Environmental Policy Act to actions of Commission not affected by title VI of Pub. L. 94-210, see section 619 of Pub. L. 94-210, set out as a note under section 791 of this title.

§ 713. Access to information

The Corporation shall make available to the Association such information as the Association determines necessary for the Association to carry out its functions under this chapter. The Association shall request from other parties which are affected by this chapter information which will enable the Association to fulfill its functions under this chapter.

(Pub. L. 93-236, title II, §203, Jan. 2, 1974, 87 Stat. 992; Pub. L. 94-210, title VI, §607(d), Feb. 5, 1976, 90 Stat. 96; Pub. L. 97-35, title XI, §1149, Aug. 13, 1981, 95 Stat. 675.)

AMENDMENTS

1981—Pub. L. 97-35 substituted provisions relating to the Corporation making available to the Association all necessary information for provisions set out as subsecs. (a) to (d) respecting planning and other information availability, and enforcement procedures.

1976—Subsec. (a). Pub. L. 94-210 struck out provisions prohibiting requests for information under this subsection after effective date of the final system plan.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, see section 1169 of Pub. L. 97-35, set out as an Effective Date note under section 1101 of this title.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

Application of National Environmental Policy Act to actions of Commission not affected by title VI of Pub. L. 94-210, see section 619 of Pub. L. 94-210, set out as a note under section 791 of this title.

§ 714. Omitted

CODIFICATION

Section, Pub. L. 93-236, title II, §204, Jan. 2, 1974, 87 Stat. 993, directed the Secretary, within 30 days after Jan. 2, 1974, to prepare a report, with recommendations, with respect to the geographic zones within the region in which said service should be provided, to submit the report to the Office, the Association, the Governor, and the public utilities commission of each State studied in the report and to local governments, consumer organizations, environmental groups, the public, and to Congress, and to publish the report in the Federal Register.

DELAWARE-MARYLAND-VIRGINIA PENINSULA RAIL STUDY; REPORT TO CONGRESS

Pub. L. 94-555, title III, §302, Oct. 19, 1976, 90 Stat. 2631, directed Interstate Commerce Commission to submit a report to Congress, within six months of Oct. 19, 1976, regarding problems of and need for rail transportation services on Delaware-Maryland-Virginia peninsula.

§ 715. Repealed. Pub. L. 95-473, §4(b), Oct. 17, 1978, 92 Stat. 1466

Section, Pub. L. 93-236, title II, §205, Jan. 2, 1974, 87 Stat. 993, Pub. L. 94-5, §3, Feb. 28, 1975, 89 Stat. 7; Pub. L. 94-210, title III, §309, Feb. 5, 1976, 90 Stat. 57, established Rail Services Planning Office.

§ 716. Final system plan

(a) Goals

The final system plan shall be formulated in such a way as to effectuate the following goals:

(1) the creation, through a process of reorganization, of a financially self-sustaining rail and express service system in the region;

(2) the establishment and maintenance of a rail service system adequate to meet the rail transportation needs and service requirements of the region;

(3) the establishment of improved high-speed rail passenger service, consonant with the recommendations of the Secretary in his report of September 1971, entitled “Recommendations for Northeast Corridor Transportation”;

(4) the preservation, to the extent consistent with other goals, of existing patterns of service by railroads (including short-line and terminal railroads), and of existing railroad trackage in areas in which fossil fuel natural resources are located, and the utilization of those modes of transportation in the region which require the smallest amount of scarce energy resources and which can most efficiently transport energy resources;

(5) the retention and promotion of competition in the provision of rail and other transportation services in the region;

(6) the attainment and maintenance of any environmental standards, particularly the applicable national ambient air quality standards and plans established under the Clean Air Act Amendments of 1970, taking into consideration the environmental impact of alternative choices of action;

(7) the movement of passengers and freight in rail transportation in the region in the most efficient manner consistent with safe operation, including the requirements of commuter and intercity rail passenger service; the extent to which there should be coordination with the National Railroad Passenger Corporation and similar entities; and the identification of all short-to-medium distance corridors in densely populated areas in which the major upgrading of rail lines for high-speed passenger operation would return substantial public benefits; and

(8) the minimization of job losses and associated increases in unemployment and community benefit costs in areas in the region presently served by rail service.

(b) Factors

The final system plan shall be based upon due consideration of all factors relevant to the realization of the goals set forth in subsection (a) of this section. Such factors include the need for and the cost of rehabilitation and modernization of track, equipment, and other facilities; methods of achieving economies in the cost of rail operations in the region; means of achieving rationalization of rail services and the rail service system in the region; marketing studies; the impact on railroad employees; consumer needs; traffic analyses; financial studies; and any other factors identified by the Association under section 712(b)¹ of this title or in the report of the Secretary required under section 714(a) of this title.

(c) Designations

The final system plan shall designate—

(1) which rail properties of railroads in reorganization in the region or of railroads leased, operated, or controlled by any railroad in reorganization in the region—

(A) shall be transferred to the Corporation: *Provided*, That the Corporation shall, within 95 days after the effective date of the final system plan, give notice to the Association of which such rail properties, if any, are to be transferred to a subsidiary of the Corporation in the event that the Board of Directors of the Association finds that such transfer would be consistent with the final system plan;

(B) shall be offered for sale to a profitable railroad operating in the region and, if such offer is accepted, operated by such railroad; the plan shall designate what additions shall be made to the designation under subparagraph (A) of this paragraph and what alternative designations shall be made under this paragraph in the event such profitable railroad fails to accept such offer;

(C) shall be purchased, leased, or otherwise acquired from the Corporation by the Na-

tional Railroad Passenger Corporation in accordance with the exercise of its option under section 791(d) of this title for improvement to achieve the goal set forth in subsection (a)(3) of this section;

(D) may be purchased or leased from the Corporation by (i) a State or a local or regional transportation authority to meet the needs of commuter and intercity rail passenger service, or (ii) the National Railroad Passenger Corporation to meet the needs of improved rail passenger service over intercity routes, other than properties designated pursuant to subparagraph (C) of this paragraph; and

(E) if not otherwise required to be operated by the Corporation, a government entity, or a responsible person, are suitable for use for other public purposes, including highways, other forms of transportation, conservation, energy transmission, education or health care facilities, or recreation. In carrying out this subparagraph, the Association shall solicit the views and recommendations of the Secretary, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, and other agencies of the Federal Government and of the States and political subdivisions thereof within the region, and the general public; and

(2) which rail properties of profitable railroads operating in the region may be offered for sale to the Corporation or to other profitable railroads operating in the region subject to paragraphs (3) and (4) of subsection (d) of this section. Any rail properties designated to be offered for sale to the Corporation may be sold instead to a subsidiary of the Corporation.

(d) Transfers

All transfers or conveyances pursuant to the final system plan shall be made in accordance with, and subject to, the following principles:

(1) All rail properties to be transferred to the Corporation or any subsidiary thereof by a profitable railroad, by trustees of a railroad in reorganization, or by any railroad leased, operated, or controlled by a railroad in reorganization in the region, shall be transferred in exchange for stock and other securities of the Corporation or any subsidiary thereof (including obligations of the Association) and the other benefits accruing to such railroad by reason of such transfer.

(2) All rail properties to be conveyed to a profitable railroad operating in the region by trustees of a railroad in reorganization, or by any railroad leased, operated, or controlled by a railroad in reorganization in the region, shall be conveyed in exchange for compensation from the profitable railroad.

(3) Notwithstanding any other provision of this chapter, no acquisition under this chapter shall be made by any profitable railroad operating in the region without a determination with respect to each such transaction and all such transactions cumulatively (A) by the Association, upon adoption and release of the preliminary system plan, that such acquisi-

¹ See References in Text note below.

tion or acquisitions will not materially impair the profitability of any other profitable railroad operating in the region or of the Corporation, and (B) by the Commission, which shall be made within 90 days after adoption and release by the Association of the preliminary system plan, that such acquisition or acquisitions will be in full accord and comply with the provisions and standards of subchapter III² of chapter 113 of title 49. All determinations made by the Association in the correction to the preliminary system plan published on April 11, 1975 (40 Fed. Reg. 16377), shall be treated for all purposes as if they had been made upon adoption and release by the Association of the preliminary system plan. All determinations made by the Commission with respect to such correction shall be treated for all purposes as if they had been made within 90 days after adoption and release by the Association of the preliminary system plan. All determinations made by the Commission with respect to acquisitions by profitable railroads referred to in any supplement to the preliminary system plan published under section 717(b)(2) of this title shall be deemed to be timely if made prior to the adoption of the final system plan under section 717(c) of this title. The determination by the Association shall not be reviewable in any court. The determination by the Commission shall not be reviewable in any court.

(4) Where the final system plan designates specified rail properties of a railroad in reorganization in the region, or of a railroad leased, operated, or controlled by a railroad in reorganization in the region, to be offered for sale to and operated by a profitable railroad operating in the region, such designation shall terminate 7 days after February 5, 1976, unless, prior to such date, such profitable railroad has notified the Association in writing of its acceptance of such offer. Any such offer may be modified until the date of acceptance thereof, unless such modification results in an offer for the sale of rail properties at less than the net liquidation value thereof. Where the final system plan designates specified rail properties of a profitable railroad operating in the region as authorized to be offered for sale or lease to the Corporation or to other profitable railroads operating in the region, such designation and authorization shall terminate 95 days after the effective date of the final system plan unless, prior to such date, a binding agreement with respect to such properties has been entered into and concluded.

(5) All properties—

(A) transferred by the Corporation pursuant to subsection (c)(1)(C) of this section and section 791(d) of this title;

(B) transferred by the Corporation to any State (or local or regional transportation authority), pursuant to subsection (c)(1)(D) of this section, or

(C) transferred by the Corporation to any State, local or regional transportation authority, or the National Railroad Passenger Corporation, within 3 years after the date of

conveyance, pursuant to section 743(b)(1) of this title, to meet the needs of commuter or intercity rail passenger service,

shall be transferred at a value related to the value received from the Corporation pursuant to the final system plan for the transfer to such Corporation of such properties. The value of any such properties, which are transferred pursuant to subparagraph (B) or (C) of this paragraph, shall be adjusted to reflect the value attributable to any applicable maintenance and improvement provided by the Corporation (to the extent the Corporation has not been released from the obligation to pay for such improvements) and the cost to the Corporation of transferring such properties. The Corporation, its Board of Directors, and its individual directors shall not be liable to any party, for money damages or in any other manner, solely by reason of the fact that the Corporation transferred property pursuant to section 743 of this title to meet the needs of commuter or intercity rail passenger service or for purposes of providing rail marine freight floating service, except as otherwise provided with respect to the Corporation pursuant to section 743(c)(2) of this title.

(6) Notwithstanding any statement to the contrary in the final system plan, a State (or a local or regional transportation authority) shall not be required to deliver to the Corporation a firm commitment to acquire rail properties designated to such State or authority prior to 7 days after February 5, 1976.

(7) Notwithstanding any contrary provision in the options conveyed to the Corporation by railroads in reorganization, or railroads leased, operated, or controlled by a railroad in reorganization, with respect to the acquisition by the Corporation pursuant to the final system plan, on behalf of a State (or a local or regional transportation authority) of rail properties designated under subsection (c)(1)(D) of this section, such options shall not be deemed to have expired prior to 7 days after September 30, 1976. The exercise by the Corporation of any such option shall be effective if it is made, prior to the expiration of such 7-day period, in the manner prescribed in such options.

(e) Corporation features

The final system plan shall set forth—

(1) pro forma earnings for the Corporation, as reasonably projected and considering the additions or changes in the designation of rail properties to be operated by the Corporation which may be made under subsection (d)(4) of this section;

(2) the capital structure of the Corporation, based on the pro forma earnings of the Corporation as set forth, including such debt capitalization as shall be reasonably deemed to conform to the requirements of the public interest with respect to railroad debt securities, including the adequacy of coverage of fixed charges; and

(3) the manner in which employee stock ownership plans may, to the extent practicable, be utilized for meeting the capitalization requirements of the Corporation, taking into account (A) the relative cost savings com-

²See References in Text note below.

pared to conventional methods of corporate finance; (B) the labor cost savings; (C) the potential for minimizing strikes and producing more harmonious relations between labor organizations and railway management; (D) the projected employee dividend incomes; (E) the impact on quality of service and prices to railway users; and (F) the promotion of the objectives of this chapter of creating a financially self-sustaining railway system in the region which also meets the service needs of the region and the Nation.

(f) Value

The final system plan shall designate the value of all rail properties to be transferred under the final system plan and the value of the securities and other benefits to be received for transferring those rail properties to the Corporation in accordance with the final system plan.

(g) Other provisions

The final system plan may recommend arrangements among various railroads for joint use or operation of rail properties on a shared ownership, cooperative, pooled, or condominium-type basis, subject to such terms and conditions as may be specified in the final system plan. The final system plan shall also make such designations as are determined to be necessary in accordance with the provisions of section 762 or 763² of this title.

(h) Obligational authority

The final system plan shall recommend the amount of obligations of the Association which are necessary to enable it to implement the final system plan.

(i) Terms and conditions for securities

The final system plan may include terms and conditions for any securities to be issued by the Corporation in exchange for the conveyance of rail properties under the final system plan which in the judgement of the Association will minimize any actual or potential debt burden on the Corporation. Any such terms and conditions for securities of the Corporation which purport to directly obligate the Association shall not become effective without affirmative approval, with or without modification by a joint resolution of the Congress.

(j) Additional properties deemed designated

Any rail properties over which rail service was being provided as of February 5, 1976, and which were recommended in the preliminary system plan for transfer to the Corporation, shall be deemed to be designated in the final system plan for transfer to the Corporation under subsection (c)(1)(A) of this section. Any designation in the final system plan, pursuant to subsection (c)(1)(B) of this section, of overhead trackage rights to be acquired by a profitable railroad operating in the region over specified rail properties to be acquired by the Corporation, where such designation does not (1) authorize such profitable railroad to interchange traffic with at least one railroad, or (2) provide for the connection of portions of such profitable railroad's rail

properties, and where the transfer of ownership of such rail properties (including trackage rights) to such profitable railroad was recommended in the preliminary system plan, and the Commission has made a determination with respect thereto, in accordance with subsection (d)(3) of this section, shall be deemed to authorize such profitable railroad to interchange traffic with the Corporation and any other profitable railroad connecting with such specified rail properties.

(Pub. L. 93-236, title II, § 206, Jan. 2, 1974, 87 Stat. 994; Pub. L. 94-5, § 2(b), Feb. 28, 1975, 89 Stat. 7; Pub. L. 94-210, title VI, § 607(e)-(j), (o)-(q), title VIII, § 807, Feb. 5, 1976, 90 Stat. 96-98, 143; Pub. L. 94-436, §§ 2, 4, Sept. 30, 1976, 90 Stat. 1398; Pub. L. 94-555, title II, § 202(a), (c), Oct. 19, 1976, 90 Stat. 2616, 2617; Pub. L. 95-611, § 4(a), Nov. 8, 1978, 92 Stat. 3090.)

REFERENCES IN TEXT

Clean Air Act Amendments of 1970, referred to in subsec. (a)(6), mean Pub. L. 91-604, Dec. 31, 1970, 84 Stat. 1678. For complete classification of this Act to the Code, see Short Title of 1970 Amendment note set out under section 7401 of Title 42, The Public Health and Welfare, and Tables.

Section 712(b) of this title, referred to in subsec. (b), which related to additional duties of the Association, was repealed and section 712(c) of this title was redesignated section 712(b) by Pub. L. 97-35, title XI, § 1148(a), Aug. 13, 1981, 95 Stat. 674.

Section 714 of this title, referred to in subsec. (b), was omitted from the Code.

Subchapter III of chapter 113 of title 49, referred to in subsec. (d)(3), was omitted in the general amendment of subtitle IV of Title 49, Transportation, by Pub. L. 104-88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 804. Previously, in subsec. (d)(3), "subchapter III of chapter 113 of title 49" was substituted for "section 5 of part I of the Interstate Commerce Act (49 U.S.C. 5)" on authority of Pub. L. 95-473, § 3(b), Oct. 17, 1978, 92 Stat. 1446, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49.

Sections 762 and 763 of this title, referred to in subsec. (g), were repealed by Pub. L. 94-210, title VIII, § 806, Feb. 5, 1976, 90 Stat. 143, eff. Apr. 1, 1978.

AMENDMENTS

1978—Subsec. (d)(5)(C). Pub. L. 95-611 substituted "3 years" for "900 days".

1976—Subsec. (c)(1)(A). Pub. L. 94-210, § 607(g), inserted proviso relating to notice by the Corporation to the Association.

Subsec. (c)(1)(B). Pub. L. 94-210, § 607(f), inserted provision relating to alternative designations to be made under this paragraph.

Subsec. (c)(1)(D). Pub. L. 94-210, § 607(j), designated existing provision as cl. (i) and added cl. (ii).

Subsec. (c)(2). Pub. L. 94-210, § 607(h), inserted provision relating to sale of designated properties to a subsidiary of the Corporation.

Subsec. (d)(1). Pub. L. 94-210, § 607(i), inserted "or any subsidiary thereof" after "Corporation" wherever appearing.

Subsec. (d)(3). Pub. L. 94-210, § 607(e), inserted provisions relating to correction to the preliminary system plan published in 40 Fed. Reg. 16377, determinations made with respect to such correction by the Commission, and determinations made with respect to acquisitions referred to in any supplement to the preliminary system plan.

Subsec. (d)(4). Pub. L. 94-210, § 607(o), inserted provision relating to modification of offer until the date of acceptance, and substituted "95" for "60" and "7 days after February 5, 1976," for "30 days after the effective date of the final system plan".

² See References in Text note below.

Subsec. (d)(5). Pub. L. 94-555, §202(a), inserted "or for purposes of providing rail marine freight floating service" after "intercity rail passenger service".

Pub. L. 94-436, §2, inserted provision relieving the Corporation, its Board of Directors, and its individual directors from liability to any party by reason of the fact that the Corporation transferred property pursuant to section 743 of this title.

Pub. L. 94-210, §807, restructured provisions and substituted provisions relating to valuation of transferred properties transferred by the Corporation and adjustment of such valuation, for provisions relating to valuation of transferred properties sold by the Corporation.

Subsec. (d)(6). Pub. L. 94-210, §607(p), added par. (6).

Subsec. (d)(7). Pub. L. 94-555, §202(c), inserted "by the Corporation pursuant to the final system plan" after "with respect to the acquisition".

Pub. L. 94-436, §4, added par. (7).

Subsec. (j). Pub. L. 94-210, §607(q), added subsec. (j).

1975—Subsec. (a)(1). Pub. L. 94-5 inserted "and express" after "rail".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 4(b) of Pub. L. 95-611 provided that: "The amendment made by this Act [probably meaning this section 4, which amended section 716 of this title] shall be effective on January 2, 1974."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-555 effective Oct. 1, 1976, see section 303 of Pub. L. 94-555, set out as a note under section 702 of this title.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104-88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104-88, set out as a note under section 701 of Title 49.

ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

See section 1341 of this title.

APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT

Application of National Environmental Policy Act to actions of Commission not affected by title VI of Pub. L. 94-210, see section 619 of Pub. L. 94-210, set out as a note under section 791 of this title.

§ 717. Adoption of final system plan

(a) Preliminary system plan

(1) Within 420 days after January 2, 1974, the Association shall adopt and release a preliminary system plan prepared by it on the basis of reports and other information submitted to it by the Secretary, the Office, and interested persons in accordance with this chapter and on the basis of its own investigations, consultations, research, evaluation, and analysis pursuant to this chapter. Copies of the preliminary system plan shall be transmitted by the Association to the Secretary, the Office, the Governor and public utility commission of each State in the region, the Congress, each court having jurisdiction over a railroad in reorganization in the region, the special court, and interested persons, and a copy shall be published in the Federal Register.

The Association shall invite and afford interested persons an opportunity to submit comments on the preliminary system plan to the Association within 60 days after the date of its release.

(2) The Office is authorized and directed to hold public hearings on the preliminary system plan and to make available to the Association a summary and analysis of the evidence received in the course of such proceedings, together with its critique and evaluation of the preliminary system plan, not later than 60 days after the date of release of such plan. The Office is authorized to hold public hearings on any supplement to the preliminary system plan and to make available to the Association a summary and analysis of the evidence received in the course of such proceedings, together with its critique and evaluation of such supplement, not later than 30 days after the release of such supplement.

(b) Approval

(1) Within 120 days after January 2, 1974, each United States district court or other court having jurisdiction over a railroad in reorganization shall decide whether the railroad is reorganizable on an income basis within a reasonable time under section 77 of the Bankruptcy Act and that the public interest would be better served by continuing the present reorganization proceedings than by a reorganization under this chapter. Within 60 days after the submission of the report by the Office, under section 715(d)(1) of this title, on the Secretary's report on rail services in the region, each United States district court or other court having jurisdiction over a railroad in reorganization shall decide whether or not such railroad shall be reorganized by means of transferring some of its rail properties to the Corporation pursuant to the provisions of this chapter. Because of the strong public interest in the continuance of rail transportation in the region pursuant to a system plan devised under the provisions of this chapter, each such court shall order that the reorganization be proceeded with pursuant to this chapter unless it (1) has found that the railroad is reorganizable on an income basis within a reasonable time under section 77 of the Bankruptcy Act and that the public interest would be better served by such a reorganization than by a reorganization under this chapter, or (2) finds that this chapter does not provide a process which would be fair and equitable to the estate of the railroad in reorganization in which case it shall dismiss the reorganization proceeding. If a court does not enter an order or make a finding as required by this subsection, the reorganization shall be proceeded with pursuant to this chapter. An appeal from an order made under this section may be made only to the special court. Appeal to the special court shall be taken within 10 days following entry of an order pursuant to this subsection, and the special court shall complete its review and render its decision within 80 days after such appeal is taken. There shall be no review of the decision of the special court.

(2) Whenever it has been finally determined pursuant to the procedures of paragraph (1) of this subsection, that the reorganization of a

CHAPTER 17—RAILROAD REVITALIZATION AND REGULATORY REFORM

SUBCHAPTER I—GENERAL PROVISIONS

- Sec.
801. Declaration of policy.
802. Definitions.
803. Repealed.

SUBCHAPTER II—RAILROAD REHABILITATION AND IMPROVEMENT FINANCING

821. Definitions.
822. Direct loans and loan guarantees.
823. Administration of direct loans and loan guarantees.
824 to 835. Repealed or Transferred.
836. Employee protection.
837, 838. Repealed.

SUBCHAPTER III—NORTHEAST CORRIDOR PROJECT IMPLEMENTATION

851 to 856. Repealed.

SUBCHAPTER I—GENERAL PROVISIONS

§ 801. Declaration of policy

(a) Purpose

It is the purpose of the Congress in this Act to provide the means to rehabilitate and maintain the physical facilities, improve the operations and structure, and restore the financial stability of the railway system of the United States, and to promote the revitalization of such railway system, so that this mode of transportation will remain viable in the private sector of the economy and will be able to provide energy-efficient, ecologically compatible transportation services with greater efficiency, effectiveness, and economy, through—

- (1) ratemaking and regulatory reform;
- (2) the encouragement of efforts to restructure the system on a more economically justified basis, including planning authority in the Secretary of Transportation, an expedited procedure for determining whether merger and consolidation applications are in the public interest, and continuing reorganization authority;
- (3) financing mechanisms that will assure adequate rehabilitation and improvement of facilities and equipment, implementation of the final system plan, and implementation of the Northeast Corridor project;
- (4) transitional continuation of service on light-density rail lines that are necessary to continued employment and community well-being throughout the United States;
- (5) auditing, accounting, reporting, and other requirements to protect Federal funds and to assure repayment of loans and financial responsibility; and
- (6) necessary studies.

(b) Policy

It is declared to be the policy of the Congress in this Act to—

- (1) balance the needs of carriers, shippers, and the public;
- (2) foster competition among all carriers by railroad and other modes of transportation, to promote more adequate and efficient transportation services, and to increase the attractiveness of investing in railroads and rail-service-related enterprises;

(3) permit railroads greater freedom to raise or lower rates for rail services in competitive markets;

(4) promote the establishment of railroad rate structures which are more sensitive to changes in the level of seasonal, regional, and shipper demand;

(5) promote separate pricing of distinct rail and rail-related services;

(6) formulate standards and guidelines for determining adequate revenue levels for railroads; and

(7) modernize and clarify the functions of railroad rate bureaus.

(Pub. L. 94-210, title I, § 101, Feb. 5, 1976, 90 Stat. 33.)

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 94-210, Feb. 5, 1976, 90 Stat. 31, as amended, known as the Railroad Revitalization and Regulatory Reform Act of 1976. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Pub. L. 94-210, § 1, Feb. 5, 1976, 90 Stat. 31, provided in part that this Act [enacting this chapter and sections 726 and 745 of this title, and sections 1a, 5c, 25b, 28c, 1813, 1853a, 1854, and 1857a of former Title 49, Transportation, amending sections 543, 545, 546, 562 to 564, 702, 711 to 713, 715, 718, 718 to 721, 724, 725, 741, 743, 744, 762, 763, 771, 772, 774, 775, 778, 779, and 791 of this title, sections 77c, 77a, 78m, and 80a-3 of Title 15, Commerce and Trade, sections 11 and 856 of former Title 31, Money and Finance, and sections 1, 1a, 5, 5b, 6, 12, 13, 15, 15a, 17, 20, 27, 314, 1653, 1658, and 1659 of former Title 49, repealing sections 761 to 762 of this title, enacting provisions set out as notes under sections 745, 761, 791, and 793 of this title, sections 77c and 80a-3 of Title 15, and sections 1, 1a, 5b, 5c, 17, and 1654 of former Title 49, and amending notes set out under section 1651 of former Title 49] may be cited as the "Railroad Revitalization and Regulatory Reform Act of 1976".

§ 802. Definitions

As used in this Act, unless the context otherwise indicates, the term—

- (1) "Association" means the United States Railway Association;
- (2) "Commission" means the Interstate Commerce Commission;
- (3) "Corporation" means the Consolidated Rail Corporation;
- (4) "final system plan" means the final system plan and any additions thereto adopted by the Association pursuant to the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.);
- (5) "includes" and variants thereof should be read as if the phrase "but is not limited to" were also set forth;
- (6) "Office" means the Rail Services Planning Office of the Commission;
- (7) "railroad" has the meaning given that term in section 20102 of title 49; and
- (8) "Secretary" means the Secretary of Transportation or his designated representative.

(Pub. L. 94-210, title I, § 102, Feb. 5, 1976, 90 Stat. 33; Pub. L. 97-468, title VI, § 615(b)(2), Jan. 14, 1983, 96 Stat. 2578; Pub. L. 104-88, title III, § 330(1), Dec. 29, 1995, 109 Stat. 953; Pub. L. 109-59, title IX, § 9003(a), Aug. 10, 2005, 119 Stat. 1921.)

§ 526. General criminal penalty when specific penalty not provided

When another criminal penalty is not provided under a provision of this chapter, subchapter III of chapter 311 (except sections 31138 and 31139), or section 31502 of this title, a person that knowingly and willfully violates any of those provisions or a regulation or order of the Secretary of Transportation under any of those provisions, related to transportation by motor carrier, motor carrier of migrant workers, or motor private carrier, shall be fined at least \$100 but not more than \$500 for the first violation and at least \$200 but not more than \$500 for a subsequent violation. A separate violation occurs each day the violation continues.

(Pub. L. 97-449, §1(b), Jan. 12, 1983, 96 Stat. 2437; Pub. L. 98-554, title II, §213(c), Oct. 30, 1984, 98 Stat. 2844; Pub. L. 103-272, §5(m)(12), July 5, 1994, 108 Stat. 1377.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
526	49:304(a)(3) (last sentence) (related to "Sec. 322(a)").	Feb. 4, 1887, ch. 104, 24 Stat. 379, §204(a)(3) (last sentence) (related to "Sec. 222(a)"); added Aug. 9, 1935, ch. 498, 49 Stat. 546.
	49:304(a)(3a) (last sentence) (related to "Sec. 322(a)").	Feb. 4, 1887, ch. 104, 24 Stat. 379, §204(a)(3a) (last sentence) (related to "Sec. 222(a)"); added Aug. 3, 1956, ch. 905, §2, 70 Stat. 958.
	49:1655(f)(2).	Oct. 15, 1966, Pub. L. 89-670, §6(f)(2), 80 Stat. 940.

The section is included because 49:1655(f)(2) gave the same administrative powers exercised by the Interstate Commerce Commission under certain sections of title 49 to the Secretary of Transportation to carry out duties transferred to the Secretary by 49:1655(e). See the revision notes for section 501 of the revised title for an explanation of the transfer under 49:1655(f)(2). The powers of the Commission have been codified in subtitle IV of the revised title. The comparable provisions of title 49 that are represented by the section may be found as follows:

Section 526	49 U.S. Code	Revised Section
	322(a).	11914

See the revision notes for the revised section for an explanation of changes made in the text. Changes not accounted for in those revision notes are as follows:

The reference to a certificate, permit, or licence is omitted as not applicable to this chapter. The text of 49:304(a)(3) (last sentence 1st-7th words) and (3a) (last sentence 1st-5th words) is omitted as executed.

AMENDMENTS

1994—Pub. L. 103-272 substituted "a provision of this chapter, subchapter III of chapter 311 (except sections 31138 and 31139), or section 31502 of this title, a person that knowingly and willfully violates any of those provisions or a regulation or order of the Secretary of Transportation under any of those provisions" for "this chapter, section 3102 of this title, or the Motor Carrier Safety Act of 1984, a person that knowingly and willfully violates a provision of this chapter or such section or Act, or a regulation or order of the Secretary of Transportation under this chapter or such section or Act".

1984—Pub. L. 98-554 inserted ", section 3102 of this title, or the Motor Carrier Safety Act of 1984" after "chapter" the first place it appears and inserted "or

such section or Act" after "chapter" the second and third places it appears.

CHAPTER 7—SURFACE TRANSPORTATION BOARD

SUBCHAPTER I—ESTABLISHMENT

- Sec. 701. Establishment of Board.
- 702. Functions.
- 703. Administrative provisions.
- 704. Annual report.
- 705. Authorization of appropriations.
- 706. Reporting official action.

SUBCHAPTER II—ADMINISTRATIVE

- 721. Powers.
- 722. Board action.
- 723. Service of notice in Board proceedings.
- 724. Service of process in court proceedings.
- 725. Administrative support.
- 726. Railroad-Shipper Transportation Advisory Council.
- 727. Definitions.

SUBCHAPTER I—ESTABLISHMENT

§ 701. Establishment of Board

(a) **ESTABLISHMENT.**—There is hereby established within the Department of Transportation the Surface Transportation Board.

(b) **MEMBERSHIP.**—(1) The Board shall consist of 3 members, to be appointed by the President, by and with the advice and consent of the Senate. Not more than 2 members may be appointed from the same political party.

(2) At any given time, at least 2 members of the Board shall be individuals with professional standing and demonstrated knowledge in the fields of transportation or transportation regulation, and at least one member shall be an individual with professional or business experience (including agriculture) in the private sector.

(3) The term of each member of the Board shall be 5 years and shall begin when the term of the predecessor of that member ends. An individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, shall be appointed for the remainder of that term. When the term of office of a member ends, the member may continue to serve until a successor is appointed and qualified, but for a period not to exceed one year. The President may remove a member for inefficiency, neglect of duty, or malfeasance in office.

(4) On January 1, 1996, the members of the Interstate Commerce Commission serving unexpired terms on December 29, 1995, shall become members of the Board, to serve for a period of time equal to the remainder of the term for which they were originally appointed to the Interstate Commerce Commission. Any member of the Interstate Commerce Commission whose term expires on December 31, 1995, shall become a member of the Board, subject to paragraph (3).

(5) No individual may serve as a member of the Board for more than 2 terms. In the case of an individual who becomes a member of the Board pursuant to paragraph (4), or an individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, such individual

may not be appointed for more than one additional term.

(6) A member of the Board may not have a pecuniary interest in, hold an official relation to, or own stock in or bonds of, a carrier providing transportation by any mode and may not engage in another business, vocation, or employment.

(7) A vacancy in the membership of the Board does not impair the right of the remaining members to exercise all of the powers of the Board. The Board may designate a member to act as Chairman during any period in which there is no Chairman designated by the President.

(c) CHAIRMAN.—(1) There shall be at the head of the Board a Chairman, who shall be designated by the President from among the members of the Board. The Chairman shall receive compensation at the rate prescribed for level III of the Executive Schedule under section 5314 of title 5.

(2) Subject to the general policies, decisions, findings, and determinations of the Board, the Chairman shall be responsible for administering the Board. The Chairman may delegate the powers granted under this paragraph to an officer, employee, or office of the Board. The Chairman shall—

(A) appoint and supervise, other than regular and full-time employees in the immediate offices of another member, the officers and employees of the Board, including attorneys to provide legal aid and service to the Board and its members, and to represent the Board in any case in court;

(B) appoint the heads of offices with the approval of the Board;

(C) distribute Board business among officers and employees and offices of the Board;

(D) prepare requests for appropriations for the Board and submit those requests to the President and Congress with the prior approval of the Board; and

(E) supervise the expenditure of funds allocated by the Board for major programs and purposes.

(Added Pub. L. 104-88, title II, §201(a), Dec. 29, 1995, 109 Stat. 932; amended Pub. L. 104-287, §5(5), Oct. 11, 1996, 110 Stat. 3389.)

AMENDMENTS

1996—Subsec. (b)(4). Pub. L. 104-287 substituted "January 1, 1996" for "the effective date of this section" and "December 29, 1995," for "the date of the enactment of the ICC Termination Act of 1995".

EFFECTIVE DATE

Pub. L. 104-88, §2, Dec. 29, 1995, 109 Stat. 804, provided that: "Except as otherwise provided in this Act [see Tables for classification], this Act shall take effect on January 1, 1996."

SAVINGS PROVISION

Pub. L. 104-88, title II, §204, Dec. 29, 1995, 109 Stat. 941, provided that:

"(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, agreements, certificates, licenses, and privileges—

"(1) that have been issued, made, granted, or allowed to become effective by the Interstate Commerce Commission, any officer or employee of the Interstate Commerce Commission, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is

transferred by this Act [see Tables for classification] or the amendments made by this Act; and

"(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date), shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Board [Surface Transportation Board], any other authorized official, a court of competent jurisdiction, or operation of law. The Board shall promptly rescind all regulations established by the Interstate Commerce Commission that are based on provisions of law repealed and not substantively reenacted by this Act.

"(b) PROCEEDINGS.—(1) The provisions of this Act shall not affect any proceedings or any application for any license pending before the Interstate Commerce Commission at the time this Act takes effect [see Effective Date note above], insofar as those functions are retained and transferred by this Act; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

"(2) The Board and the Secretary are authorized to provide for the orderly transfer of pending proceedings from the Interstate Commerce Commission.

"(3)(A) Except as provided in subparagraphs (B) and (C), in the case of a proceeding under a provision of law repeal [repealed], and not reenacted, by this Act such proceeding shall be terminated.

"(B) Any proceeding involving a pipeline carrier under subtitle IV of title 49, United States Code, shall be continued to be heard by the Board under such subtitle, as in effect on the day before the effective date of this section [see Effective Date note above], until completion of such proceeding.

"(C) Any proceeding involving the merger of a motor carrier property under subtitle IV of title 49, United States Code, shall continue to be heard by the Board under such subtitle, as in effect on the day before the effective date of this section, until completion of such proceeding.

"(4) Any proceeding with respect to any tariff, rate charge, classification, rule, regulation, or service that was pending under the Intercoastal Shipping Act, 1933 [former 46 U.S.C. App. 843 et seq.] or the Shipping Act, 1916 [former 46 U.S.C. App. 801 et seq., see Disposition Table preceding section 101 of Title 46, Shipping] before the Federal Maritime Commission on November 1, 1995, shall continue to be heard until completion or issuance of a final order thereon under all applicable laws in effect as of November 1, 1995.

"(c) SUITS.—(1) This Act shall not affect suits commenced before the date of the enactment of this Act [Dec. 29, 1995], except as provided in paragraphs (2) and (3). In all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this Act had not been enacted.

"(2) Any suit by or against the Interstate Commerce Commission begun before the effective date of this Act shall be continued, insofar as it involves a function retained and transferred under this Act, with the Board (to the extent the suit involves functions transferred to the Board under this Act) or the Secretary (to the extent the suit involves functions transferred to the Secretary under this Act) substituted for the Commission.

"(3) If the court in a suit described in paragraph (1) remands a case to the Board or the Secretary, subse-

quent proceedings related to such case shall proceed in accordance with applicable law and regulations as in effect at the time of such subsequent proceedings.

"(d) CONTINUANCE OF ACTIONS AGAINST OFFICERS.—No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of the Interstate Commerce Commission shall abate by reason of the enactment of this Act. No cause of action by or against the Interstate Commerce Commission, or by or against any officer thereof in his official capacity, shall abate by reason of enactment of this Act.

"(e) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, an officer or employee of the Board may, for purposes of performing a function transferred by this Act or the amendments made by this Act, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this Act or the amendments made by this Act."

ABOLITION OF INTERSTATE COMMERCE COMMISSION

Pub. L. 104-88, title I, § 101, Dec. 29, 1995, 109 Stat. 804, provided that: "The Interstate Commerce Commission is abolished."

ORGANIZATION OF FUNCTIONS OF SURFACE TRANSPORTATION BOARD

Pub. L. 104-88, title II, § 202, Dec. 29, 1995, 109 Stat. 940, provided that: "The Chairman of the Surface Transportation Board (in this Act [see Tables for classification] referred to as the 'Board') may allocate or reallocate any function of the Board, consistent with this title [see Tables for classification] and subchapter I of chapter 7 [49 U.S.C. 701 et seq.], as amended by section 201 of this title, among the members or employees of the Board, and may establish, consolidate, alter, or discontinue in the Board any organizational entities that were entities of the Interstate Commerce Commission, as the Chairman considers necessary or appropriate."

TRANSFER OF ASSETS AND PERSONNEL

Pub. L. 104-88, title II, § 203, Dec. 29, 1995, 109 Stat. 941, provided that:

"(a) TO BOARD.—Except as otherwise provided in this Act [see Tables for classification] and the amendments made by this Act, those personnel, property, and records employed, used, held, available, or to be made available in connection with a function transferred to the Board [Surface Transportation Board] by this Act shall be transferred to the Board for use in connection with the functions transferred, and unexpended balances of appropriations, allocations, and other funds of the Interstate Commerce Commission shall also be transferred to the Board. Such unexpended balances, allocations, and other funds, together with any unobligated balances from user fees collected by the Commission during fiscal year 1996, may be used to pay for the closedown of the Commission and severance costs for Commission personnel, regardless of whether those costs are incurred at the Commission or at the Board.

"(b) TO SECRETARY.—Except as otherwise provided in this Act and the amendments made by this Act, those personnel, property, and records employed, used, held, available, or to be made available in connection with a function transferred to the Secretary by this Act shall be transferred to the Secretary for use in connection with the functions transferred.

"(c) SEPARATED EMPLOYEES.—Notwithstanding all other laws and regulations, the Department of Transportation shall place all Interstate Commerce Commission employees separated from the Commission as a result of this Act on the DOT reemployment priority list

(competitive service) or the priority employment list (excepted service)."

REFERENCES TO INTERSTATE COMMERCE COMMISSION DEEMED TO BE REFERENCES TO SURFACE TRANSPORTATION BOARD

Pub. L. 104-88, title II, § 205, Dec. 29, 1995, 109 Stat. 943, provided that: "Any reference to the Interstate Commerce Commission in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the Interstate Commerce Commission or an officer or employee of the Interstate Commerce Commission, is deemed to refer to the Board [Surface Transportation Board], a member or employee of the Board, or the Secretary, as appropriate."

§ 702. Functions

Except as otherwise provided in the ICC Termination Act of 1995, or the amendments made thereby, the Board shall perform all functions that, immediately before January 1, 1996, were functions of the Interstate Commerce Commission or were performed by any officer or employee of the Interstate Commerce Commission in the capacity as such officer or employee.

(Added Pub. L. 104-88, title II, § 201(a), Dec. 29, 1995, 109 Stat. 933; amended Pub. L. 104-287, § 5(6), Oct. 11, 1996, 110 Stat. 3389.)

REFERENCES IN TEXT

The ICC Termination Act of 1995, referred to in text, is Pub. L. 104-88, Dec. 29, 1995, 109 Stat. 803. For complete classification of this Act to the Code, see Short Title of 1995 Amendment note set out under section 101 of this title and Tables.

AMENDMENTS

1996—Pub. L. 104-287 substituted "January 1, 1996" for "the effective date of such Act".

ABOLITION OF INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission abolished by section 101 of Pub. L. 104-88, set out as a note under section 701 of this title.

§ 703. Administrative provisions

(a) EXECUTIVE REORGANIZATION.—Chapter 9 of title 5, United States Code, shall apply to the Board in the same manner as it does to an independent regulatory agency, and the Board shall be an establishment of the United States Government.

(b) OPEN MEETINGS.—For purposes of section 552b of title 5, United States Code, the Board shall be deemed to be an agency.

(c) INDEPENDENCE.—In the performance of their functions, the members, employees, and other personnel of the Board shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of any other part of the Department of Transportation.

(d) REPRESENTATION BY ATTORNEYS.—Attorneys designated by the Chairman of the Board may appear for, and represent the Board in, any civil action brought in connection with any function carried out by the Board pursuant to this chapter or subtitle IV or as otherwise authorized by law.

(e) ADMISSION TO PRACTICE.—Subject to section 500 of title 5, the Board may regulate the admission of individuals to practice before it and may impose a reasonable admission fee.

title] may be cited as the 'Household Goods Mover Oversight Enforcement and Reform Act of 2005' [.]".

Pub. L. 109-59, title IV, § 4301, Aug. 10, 2005, 119 Stat. 1761, provided that: "This subtitle [subtitle C (§§ 4301-4308) of title IV of Pub. L. 109-59, enacting sections 14504a and 14506 of this title, amending sections 13902, 13905, 13908, 13908, 31102, and 31103 of this title, repealing section 14504 of this title, and enacting provisions set out as notes under sections 13902 and 14504 of this title] may be cited as the 'Unified Carrier Registration Act of 2005'."

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107-298, § 1, Nov. 26, 2002, 116 Stat. 2342, provided that: "This Act [amending sections 13102, 13506, 14501, and 31138 of this title] may be cited as the 'Real Interstate Driver Equity Act of 2002'."

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99-521, § 1, Oct. 22, 1986, 100 Stat. 2993, provided that: "This Act [see Tables for classification] may be cited as the 'Surface Freight Forwarder Deregulation Act of 1986'."

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97-261, § 1, Sept. 20, 1982, 96 Stat. 1102, provided: "That this Act [see Tables for classification] may be cited as the 'Bus Regulatory Reform Act of 1982'."

SHORT TITLE OF 1980 AMENDMENTS

Pub. L. 96-454, § 1, Oct. 15, 1980, 94 Stat. 2011, provided: "That this Act [see Tables for classification] may be cited as the 'Household Goods Transportation Act of 1980'."

Pub. L. 96-448, § 1, Oct. 14, 1980, 94 Stat. 1895, provided that: "This Act [see Tables for classification] may be cited as the 'Staggers Rail Act of 1980'."

Pub. L. 96-296, § 1, July 1, 1980, 94 Stat. 793, provided: "That this Act [see Tables for classification] may be cited as the 'Motor Carrier Act of 1980'."

§ 10102. Definitions

In this part—

(1) "Board" means the Surface Transportation Board;

(2) "car service" includes (A) the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, other vehicles, and special types of equipment used in the transportation of property by a rail carrier, and (B) the supply of trains by a rail carrier;

(3) "control", when referring to a relationship between persons, includes actual control, legal control, and the power to exercise control, through or by (A) common directors, officers, stockholders, a voting trust, or a holding or investment company, or (B) any other means;

(4) "person", in addition to its meaning under section 1 of title 1, includes a trustee, receiver, assignee, or personal representative of a person;

(5) "rail carrier" means a person providing common carrier railroad transportation for compensation, but does not include street, suburban, or interurban electric railways not operated as part of the general system of rail transportation;

(6) "railroad" includes—

(A) a bridge, car float, lighter, ferry, and intermodal equipment used by or in connection with a railroad;

(B) the road used by a rail carrier and owned by it or operated under an agreement; and

(C) a switch, spur, track, terminal, terminal facility, and a freight depot, yard, and ground, used or necessary for transportation;

(7) "rate" means a rate or charge for transportation;

(8) "State" means a State of the United States and the District of Columbia;

(9) "transportation" includes—

(A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property; and

(10) "United States" means the States of the United States and the District of Columbia.

(Added Pub. L. 104-88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 806.)

PRIOR PROVISIONS

Prior sections 10102 and 10103 were omitted in the general amendment of this subtitle by Pub. L. 104-88, § 102(a).

Section 10102, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1338; Pub. L. 96-296, § 10(a)(1), July 1, 1980, 94 Stat. 799; Pub. L. 96-454, § 3(a), Oct. 15, 1980, 94 Stat. 2011; Pub. L. 97-261, § 6(d)(1), Sept. 20, 1982, 96 Stat. 1107; Pub. L. 99-521, § 4, Oct. 22, 1986, 100 Stat. 2993; Pub. L. 103-272, § 5(m)(13), July 5, 1994, 108 Stat. 1377; Pub. L. 103-311, title II, §§ 205(b), 205(f), Aug. 26, 1994, 108 Stat. 1683, 1686, defined terms used in this subtitle. See sections 10102, 13102, and 15102 of this title.

Section 10103, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1340; Pub. L. 96-448, title II, § 214(c)(2), Oct. 14, 1980, 94 Stat. 1915, provided that the remedies under this subtitle were cumulative. See sections 10501, 13103, and 15103 of this title.

A prior chapter 103, consisting of sections 10301 to 10311, 10321, 10322, 10324, 10326 to 10330, 10341 to 10344, 10361 to 10364, and 10381 to 10388, was omitted in the general amendment of this subtitle by Pub. L. 104-88, § 102(a). See chapter 7 of this title.

Section 10301, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1341; Pub. L. 97-253, title V, § 502(b), (e), (h)(1), Sept. 8, 1982, 96 Stat. 806, related to organization, membership, administration, seal, and expenses of Interstate Commerce Commission.

Section 10302, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1342, related to divisions of Commission.

Section 10303, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1342, related to Secretary and public records of Commission.

Section 10304, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1342, related to employee boards of Commission.

Section 10305, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1342, related to delegation of authority by Commission.

Section 10306, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1343, related to conduct of Commission proceedings.

Section 10307, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1343, related to offices and sessions of Commission.

Section 10308, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1343, related to admission to practice before Commission.

Section 10309, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1344; Pub. L. 103-437, § 18, Nov. 2, 1994, 108 Stat. 4596, re-

lated to access to Commission records by congressional committees.

Section 10310, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1344, related to reports of official Commission actions.

Section 10311, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1345, required Commission to submit annual report to Congress.

Section 10321, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1345; Pub. L. 97-261, § 24, Sept. 20, 1982, 96 Stat. 1124; Pub. L. 103-272, § 4(j)(12), July 5, 1994, 108 Stat. 1368, related to powers of Commission.

Section 10322, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1348; Pub. L. 96-296, § 25(a), July 1, 1980, 94 Stat. 818; Pub. L. 96-454, § 5(b), Oct. 15, 1980, 94 Stat. 2014; Pub. L. 97-261, §§ 6(e), 16(c), 17(b), 28(a), Sept. 20, 1982, 96 Stat. 1107, 1117, 1119, 1128; Pub. L. 98-554, title II, § 226(c)(1), Oct. 30, 1984, 98 Stat. 2851; Pub. L. 103-272, § 5(m)(14), July 5, 1994, 108 Stat. 1377, related to Commission action and appellate procedure in non-rail proceedings.

A prior section 10323, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1346, related to rehearing, reargument, and reconsideration in nonrail proceedings, prior to repeal by Pub. L. 96-296, § 25(b), July 1, 1980, 94 Stat. 818.

Section 10324, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1347; Pub. L. 96-258, § 1(1), June 3, 1980, 94 Stat. 425; Pub. L. 96-296, § 25(c), July 1, 1980, 94 Stat. 818, related to taking effect, duration, and modification of Commission actions.

A prior section 10325, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1347, provided for judicial review in nonrail proceedings, prior to repeal by Pub. L. 96-296, § 25(d), July 1, 1980, 94 Stat. 818.

Section 10326, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1348, related to limitations in rulemaking proceedings related to rail carriers.

Section 10327, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1348; Pub. L. 96-258, § 1(2), June 3, 1980, 94 Stat. 425; Pub. L. 96-296, § 25(e), July 1, 1980, 94 Stat. 818; Pub. L. 97-375, title I, § 113, Dec. 21, 1982, 96 Stat. 1821; Pub. L. 104-66, title II, § 2101, Dec. 21, 1995, 109 Stat. 730, related to Commission action and appellate procedure in rail carrier proceedings.

Section 10328, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1350; Pub. L. 97-261, § 28(b), Sept. 20, 1982, 96 Stat. 1128; Pub. L. 99-521, § 5(a), Oct. 22, 1986, 100 Stat. 2994, related to intervention in Commission proceedings.

Section 10329, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1351; Pub. L. 99-521, § 5(b), Oct. 22, 1986, 100 Stat. 2994, related to service of notice in Commission proceedings.

Section 10330, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1352, related to service of process in court proceedings.

Section 10341, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1352, authorized Commission to refer matters to joint boards.

Section 10342, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1353, related to establishment and membership of joint boards.

Section 10343, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1353, related to powers of joint boards.

Section 10344, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1354; Pub. L. 96-296, § 36, July 1, 1980, 94 Stat. 826, related to administration and proceedings of joint boards.

Section 10381, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1355, related to Rail Services Planning Office.

Section 10362, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1355; Pub. L. 98-216, § 2(5)-(7), Feb. 14, 1984, 98 Stat. 5; Pub. L. 99-509, title IV, § 4033(c)(7), Oct. 21, 1986, 100 Stat. 1909; Pub. L. 103-272, § 4(j)(13), July 5, 1994, 108 Stat. 1368, related to duties of Rail Services Planning Office.

Section 10363, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1356; Pub. L. 103-272, § 4(j)(14), July 5, 1994, 108 Stat. 1369, related to appointment and duties of Director of Rail Services Planning Office.

Section 10364, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1356; Pub. L. 103-272, § 5(m)(15), July 5, 1994, 108 Stat. 1377, related to powers of and assistance to Director.

Section 10381, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1357, related to Office of Rail Public Counsel.

Section 10382, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1357; Pub. L. 96-258, § 1(3), June 3, 1980, 94 Stat. 425, re-

lated to duties and standing of Office of Rail Public Counsel.

Section 10383, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1357; Pub. L. 103-272, § 4(j)(14), July 5, 1994, 108 Stat. 1369, related to duties and appointment of Director of Office of Rail Public Counsel.

Section 10384, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1358, related to staff of Office of Rail Public Counsel.

Section 10385, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1358; Pub. L. 103-272, § 5(m)(15), July 5, 1994, 108 Stat. 1377, related to powers of Office of Rail Public Counsel.

Section 10386, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1358, related to reports concerning activities of Office of Rail Public Counsel.

Section 10387, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1358, related to budget requests and estimates of Office of Rail Public Counsel.

Section 10388, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1358; Pub. L. 96-73, title III, § 301, Sept. 29, 1979, 93 Stat. 557, authorized appropriations for Office of Rail Public Counsel for fiscal year ending Sept. 30, 1980.

CHAPTER 105—JURISDICTION

Sec.

10501.

General jurisdiction.

10502.

Authority to exempt rail carrier transportation.

§ 10501. General jurisdiction

(a)(1) Subject to this chapter, the Board has jurisdiction over transportation by rail carrier that is—

(A) only by railroad; or

(B) by railroad and water, when the transportation is under common control, management, or arrangement for a continuous carriage or shipment.

(2) Jurisdiction under paragraph (1) applies only to transportation in the United States between a place in—

(A) a State and a place in the same or another State as part of the interstate rail network;

(B) a State and a place in a territory or possession of the United States;

(C) a territory or possession of the United States and a place in another such territory or possession;

(D) a territory or possession of the United States and another place in the same territory or possession;

(E) the United States and another place in the United States through a foreign country; or

(F) the United States and a place in a foreign country.

(b) The jurisdiction of the Board over—

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

(c)(1) In this subsection—

(A) the term “local governmental authority”—

(i) has the same meaning given that term by section 5302(a)¹ of this title; and

(ii) includes a person or entity that contracts with the local governmental authority to provide transportation services; and

(B) the term “mass transportation” means transportation services described in section 5302(a)¹ of this title that are provided by rail.

(2) Except as provided in paragraph (3), the Board does not have jurisdiction under this part over—

(A) mass transportation provided by a local government authority; or

(B) a solid waste rail transfer facility as defined in section 10908 of this title, except as provided under sections 10908 and 10909 of this title.

(3)(A) Notwithstanding paragraph (2) of this subsection, a local governmental authority, described in paragraph (2), is subject to applicable laws of the United States related to—

(i) safety;

(ii) the representation of employees for collective bargaining; and

(iii) employment, retirement, annuity, and unemployment systems or other provisions related to dealings between employees and employers.

(B) The Board has jurisdiction under sections 11102 and 11103 of this title over transportation provided by a local governmental authority only if the Board finds that such governmental authority meets all of the standards and requirements for being a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission that were in effect immediately before January 1, 1996. The enactment of the ICC Termination Act of 1995 shall neither expand nor contract coverage of employees and employers by the Railway Labor Act, the Railroad Retirement Act of 1974, the Railroad Retirement Tax Act, and the Railroad Unemployment Insurance Act.

(Added Pub. L. 104-88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 807; amended Pub. L. 104-287, § 5(21), Oct. 11, 1996, 110 Stat. 3390; Pub. L. 110-432, div. A, title VI, § 602, Oct. 16, 2008, 122 Stat. 4900.)

REFERENCES IN TEXT

Section 5302 of this title, referred to in subsec. (c)(1)(A)(i), (B), was amended generally by Pub. L. 112-141, div. B, § 20004, July 6, 2012, 126 Stat. 623, and, as so amended, no longer contains a subsec. (a) or a definition of “mass transportation”. However, the term “local governmental authority” is defined elsewhere in that section.

The ICC Termination Act of 1995, referred to in subsec. (c)(3)(B), is Pub. L. 104-88, Dec. 29, 1995, 109 Stat. 803. For complete classification of this Act to the Code, see Short Title of 1995 Amendment note set out under section 101 of this title and Tables.

The Railway Labor Act, referred to in subsec. (c)(3)(B), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8

(§ 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

The Railroad Retirement Act of 1974, referred to in subsec. (c)(3)(B), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93-445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

The Railroad Retirement Tax Act, referred to in subsec. (c)(3)(B), is act Aug. 16, 1954, ch. 736, §§ 3201, 3202, 3211, 3212, 3221, and 3231 to 3233, 68A Stat. 431, as amended, which is classified generally to chapter 22 (§ 3201 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3233 of Title 26 and Tables.

The Railroad Unemployment Insurance Act, referred to in subsec. (c)(3)(B), is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§ 351 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 367 of Title 45 and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 10501 and 10504 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, § 102(a).

A prior section 10501, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1359; Pub. L. 96-448, title II, § 214(c)(3)-(5), Oct. 14, 1980, 94 Stat. 1915; Pub. L. 103-272, § 4(j)(15), July 5, 1994, 108 Stat. 1369, related to jurisdiction of the Interstate Commerce Commission, prior to the general amendment of this subtitle by Pub. L. 104-88, § 102(a). See sections 10501 and 15301 of this title.

AMENDMENTS

2008—Subsec. (c)(2). Pub. L. 110-432 amended par. (2) generally. Prior to amendment, text read as follows: “Except as provided in paragraph (3), the Board does not have jurisdiction under this part over mass transportation provided by a local governmental authority.”

1996—Subsec. (c)(3)(B). Pub. L. 104-287 substituted “January 1, 1996” for “the effective date of the ICC Termination Act of 1995”.

EFFECTIVE DATE

Chapter effective Jan. 1, 1996, except as otherwise provided in Pub. L. 104-88, see section 2 of Pub. L. 104-88, set out as a note under section 701 of this title.

ABOLITION OF INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission abolished by section 101 of Pub. L. 104-88, set out as a note under section 701 of this title.

§ 10502. Authority to exempt rail carrier transportation

(a) In a matter related to a rail carrier providing transportation subject to the jurisdiction of the Board under this part, the Board, to the maximum extent consistent with this part, shall exempt a person, class of persons, or a transaction or service whenever the Board finds that the application in whole or in part of a provision of this part—

(1) is not necessary to carry out the transportation policy of section 10101 of this title; and

(2) either—

(A) the transaction or service is of limited scope; or

(B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.

¹ See References in Text note below.

(c)(1) In this subsection—

(A) the term "local governmental authority"—

(i) has the same meaning given that term by section 5302(a)¹ of this title; and

(ii) includes a person or entity that contracts with the local governmental authority to provide transportation services; and

(B) the term "mass transportation" means transportation services described in section 5302(a)¹ of this title that are provided by rail.

(2) Except as provided in paragraph (3), the Board does not have jurisdiction under this part over—

(A) mass transportation provided by a local government authority; or

(B) a solid waste rail transfer facility as defined in section 10908 of this title, except as provided under sections 10908 and 10909 of this title.

(3)(A) Notwithstanding paragraph (2) of this subsection, a local governmental authority, described in paragraph (2), is subject to applicable laws of the United States related to—

(i) safety;

(ii) the representation of employees for collective bargaining; and

(iii) employment, retirement, annuity, and unemployment systems or other provisions related to dealings between employees and employers.

(B) The Board has jurisdiction under sections 11102 and 11103 of this title over transportation provided by a local governmental authority only if the Board finds that such governmental authority meets all of the standards and requirements for being a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission that were in effect immediately before January 1, 1996. The enactment of the ICC Termination Act of 1995 shall neither expand nor contract coverage of employees and employers by the Railway Labor Act, the Railroad Retirement Act of 1974, the Railroad Retirement Tax Act, and the Railroad Unemployment Insurance Act.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 807; amended Pub. L. 104-287, §5(21), Oct. 11, 1996, 110 Stat. 3390; Pub. L. 110-432, div. A, title VI, §602, Oct. 16, 2008, 122 Stat. 4900.)

REFERENCES IN TEXT

Section 5302 of this title, referred to in subsec. (c)(1)(A)(i), (B), was amended generally by Pub. L. 112-141, div. B, §20004, July 6, 2012, 126 Stat. 623, and, as so amended, no longer contains a subsec. (a) or a definition of "mass transportation". However, the term "local governmental authority" is defined elsewhere in that section.

The ICC Termination Act of 1995, referred to in subsec. (c)(3)(B), is Pub. L. 104-88, Dec. 29, 1995, 109 Stat. 803. For complete classification of this Act to the Code, see Short Title of 1995 Amendment note set out under section 101 of this title and Tables.

The Railway Labor Act, referred to in subsec. (c)(3)(B), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8

(§151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

The Railroad Retirement Act of 1974, referred to in subsec. (c)(3)(B), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93-445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

The Railroad Retirement Tax Act, referred to in subsec. (c)(3)(B), is act Aug. 16, 1954, ch. 736, §§3201, 3202, 3211, 3212, 3221, and 3231 to 3233, 68A Stat. 431, as amended, which is classified generally to chapter 22 (§3201 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3233 of Title 26 and Tables.

The Railroad Unemployment Insurance Act, referred to in subsec. (c)(3)(B), is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§351 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 367 of Title 45 and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 10501 and 10504 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

A prior section 10501, Pub. L. 96-473, Oct. 17, 1978, 92 Stat. 1359; Pub. L. 96-448, title II, §214(c)(3)-(5), Oct. 14, 1980, 94 Stat. 1915; Pub. L. 103-272, §4(j)(15), July 5, 1994, 108 Stat. 1369, related to jurisdiction of the Interstate Commerce Commission, prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a). See sections 10501 and 15301 of this title.

AMENDMENTS

2008—Subsec. (c)(2). Pub. L. 110-432 amended par. (2) generally. Prior to amendment, text read as follows: "Except as provided in paragraph (3), the Board does not have jurisdiction under this part over mass transportation provided by a local governmental authority."

1996—Subsec. (c)(3)(B). Pub. L. 104-287 substituted "January 1, 1996" for "the effective date of the ICC Termination Act of 1995".

EFFECTIVE DATE

Chapter effective Jan. 1, 1996, except as otherwise provided in Pub. L. 104-88, see section 2 of Pub. L. 104-88, set out as a note under section 701 of this title.

ABOLITION OF INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission abolished by section 101 of Pub. L. 104-88, set out as a note under section 701 of this title.

§ 10502. Authority to exempt rail carrier transportation

(a) In a matter related to a rail carrier providing transportation subject to the jurisdiction of the Board under this part, the Board, to the maximum extent consistent with this part, shall exempt a person, class of persons, or a transaction or service whenever the Board finds that the application in whole or in part of a provision of this part—

(1) is not necessary to carry out the transportation policy of section 10101 of this title; and

(2) either—

(A) the transaction or service is of limited scope; or

(B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.

¹ See References in Text note below.

(b) The Board may, where appropriate, begin a proceeding under this section on its own initiative or on application by the Secretary of Transportation or an interested party. The Board shall, within 90 days after receipt of any such application, determine whether to begin an appropriate proceeding. If the Board decides not to begin a class exemption proceeding, the reasons for the decision shall be published in the Federal Register. Any proceeding begun as a result of an application under this subsection shall be completed within 9 months after it is begun.

(c) The Board may specify the period of time during which an exemption granted under this section is effective.

(d) The Board may revoke an exemption, to the extent it specifies, when it finds that application in whole or in part of a provision of this part to the person, class, or transportation is necessary to carry out the transportation policy of section 10101 of this title. The Board shall, within 90 days after receipt of a request for revocation under this subsection, determine whether to begin an appropriate proceeding. If the Board decides not to begin a proceeding to revoke a class exemption, the reasons for the decision shall be published in the Federal Register. Any proceeding begun as a result of a request under this subsection shall be completed within 9 months after it is begun.

(e) No exemption order issued pursuant to this section shall operate to relieve any rail carrier from an obligation to provide contractual terms for liability and claims which are consistent with the provisions of section 11706 of this title. Nothing in this subsection or section 11706 of this title shall prevent rail carriers from offering alternative terms nor give the Board the authority to require any specific level of rates or services based upon the provisions of section 11706 of this title.

(f) The Board may exercise its authority under this section to exempt transportation that is provided by a rail carrier as part of a continuous intermodal movement.

(g) The Board may not exercise its authority under this section to relieve a rail carrier of its obligation to protect the interests of employees as required by this part.

(Added Pub. L. 104-88, title I, § 102(a), Dec. 29, 1995, 109 Stat. 808.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10505 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, § 102(a).

Prior sections 10502 to 10505, 10521 to 10531, 10541 to 10544, and 10561, were omitted in the general amendment of this subtitle by Pub. L. 104-88, § 102(a).

Section 10502, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1360, related to Interstate Commerce Commission jurisdiction over express carrier transportation.

Section 10503, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1360, related to railroad and water transportation connections and rates. See section 10703 of this title.

Section 10504, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1360; Pub. L. 97-449, § 4(b)(4), Jan. 12, 1983, 96 Stat. 2441; Pub. L. 103-272, § 4(j)(16), July 5, 1994, 108 Stat. 1369, related to jurisdiction of Commission over mass transportation provided by local governments. See section 10501 of this title.

Section 10505, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1361; Pub. L. 96-448, title II, § 213, Oct. 14, 1980, 94 Stat.

1912; Pub. L. 103-311, title II, § 205(a), (c)(1), Aug. 26, 1994, 108 Stat. 1683, 1684, related to authority of Commission to exempt rail carrier and motor carrier transportation. See sections 10502 and 13541 of this title.

Section 10521, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1361; Pub. L. 96-296, § 31(b), July 1, 1980, 94 Stat. 824; Pub. L. 97-261, § 6(c), Sept. 20, 1982, 96 Stat. 1107; Pub. L. 99-521, § 6(a), Oct. 22, 1986, 100 Stat. 2994; Pub. L. 103-305, title VI, § 601(b)(2)(C), Aug. 23, 1994, 108 Stat. 1606; Pub. L. 103-311, title II, § 211(b)(1), Aug. 26, 1994, 108 Stat. 1689, related to jurisdiction of Commission over motor carrier transportation. See section 13501 of this title.

Section 10522, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1362, related to exempt transportation between Alaska and other States. See section 13502 of this title.

Section 10523, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1362; Pub. L. 99-521, § 6(b), Oct. 22, 1986, 100 Stat. 2994, related to exempt motor vehicle transportation in terminal areas. See section 13503 of this title.

Section 10524, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1363; Pub. L. 96-296, § 9, July 1, 1980, 94 Stat. 798, related to Commission jurisdiction over transportation furthering a primary business. See section 13505 of this title.

Section 10525, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1363; Pub. L. 96-258, § 1(4), June 3, 1980, 94 Stat. 425; Pub. L. 97-261, § 30, Sept. 20, 1982, 96 Stat. 1128, related to exempt motor carrier transportation entirely in one State. See section 13504 of this title.

Section 10526, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1364; Pub. L. 96-258, § 1(5), June 3, 1980, 94 Stat. 425; Pub. L. 96-296, § 7, 21(a), 24(a), July 1, 1980, 94 Stat. 797, 812, 814; Pub. L. 96-454, § 11(a), Oct. 15, 1980, 94 Stat. 2023; Pub. L. 97-261, § 14(d), Sept. 20, 1982, 96 Stat. 1114; Pub. L. 97-377, § 152, Dec. 21, 1982, 96 Stat. 1918; Pub. L. 97-449, § 5(g)(1), Jan. 12, 1983, 96 Stat. 2442; Pub. L. 98-216, § 2(8), Feb. 14, 1984, 98 Stat. 5; Pub. L. 98-554, title II, § 227(c), Oct. 30, 1984, 98 Stat. 2852; Pub. L. 103-272, § 4(j)(17), July 5, 1994, 108 Stat. 1369, related to miscellaneous motor carrier transportation exemptions. See section 13506 of this title.

Section 10527, added Pub. L. 96-296, § 16(a), July 1, 1980, 94 Stat. 810; amended Pub. L. 103-272, § 5(m)(16), July 5, 1994, 108 Stat. 1377, related to written contracts pertaining to certain interstate movements by motor vehicle.

Section 10528, added Pub. L. 96-296, § 21(b)(1), July 1, 1980, 94 Stat. 812; amended Pub. L. 96-454, § 11(b), Oct. 15, 1980, 94 Stat. 2023; Pub. L. 103-272, § 5(m)(17), July 5, 1994, 108 Stat. 1377, related to mixed loads of regulated and unregulated property. See section 13507 of this title.

Section 10529, added Pub. L. 96-296, § 24(b)(1), July 1, 1980, 94 Stat. 814; amended Pub. L. 103-272, § 5(m)(18), July 5, 1994, 108 Stat. 1377, related to authority of Commission over cooperative associations. See section 13508 of this title.

Section 10530, added Pub. L. 98-554, title II, § 226(a)(1), Oct. 30, 1984, 98 Stat. 2848; amended Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-690, title IX, § 9111(a)-(f), Nov. 18, 1988, 102 Stat. 4531-4533; Pub. L. 103-272, § 4(j)(18), (o), July 5, 1994, 108 Stat. 1369, 1371, related to certificates of registration for certain foreign carriers. See section 13902 of this title.

Section 10531, added Pub. L. 103-272, § 3(1), July 5, 1994, 108 Stat. 1360, related to mass transportation exemption from Commission jurisdiction.

Section 10541, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1365, related to jurisdiction of Commission over transportation by water carriers. See section 13521 of this title.

Section 10542, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1366; Pub. L. 98-89, § 3(b), Aug. 26, 1983, 97 Stat. 599; Pub. L. 98-216, § 2(9), (10), Feb. 14, 1984, 98 Stat. 5; Pub. L. 103-272, § 5(m)(19), July 5, 1994, 108 Stat. 1377, related to exemption of transportation by water carriers of commodities in bulk from Commission jurisdiction.

Section 10543, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1367, related to exemption of certain incidental water transportation from jurisdiction of Commission.

Section 10544, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1368; Pub. L. 96-258, § 1(6), June 3, 1980, 94 Stat. 425; Pub.

L. 97-449, §5(g)(2), Jan. 12, 1983, 96 Stat. 2443; Pub. L. 98-216, §2(11), Feb. 14, 1984, 98 Stat. 5; Pub. L. 103-272, §5(m)(19), July 5, 1994, 108 Stat. 1377, related to exemption of certain miscellaneous water carrier transportation from Commission jurisdiction.

Section 10561, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1369; Pub. L. 99-521, §6(c), Oct. 22, 1986, 100 Stat. 2994; Pub. L. 103-272, §5(m)(20), July 5, 1994, 108 Stat. 1377, related to jurisdiction of Commission over services of household goods freight forwarders. See section 13531 of this title.

A prior section 10562, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1369; Pub. L. 97-449, §5(g)(3), Jan. 12, 1983, 96 Stat. 2443, related to exempt freight forwarder service, prior to repeal by Pub. L. 99-521, §6(d)(1), 15, Oct. 22, 1986, 100 Stat. 2994, 2999, effective 60 days after Oct. 22, 1986.

CHAPTER 107—RATES

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SUBCHAPTER I—GENERAL AUTHORITY

§ 10701. Standards for rates, classifications, through routes, rules, and practices

(a) A through route established by a rail carrier must be reasonable. Divisions of joint rates by rail carriers must be made without unreasonable discrimination against a participating carrier and must be reasonable.

(b) A rail carrier providing transportation subject to the jurisdiction of the Board under this part may not discriminate in its rates against a connecting line of another rail carrier providing transportation subject to the jurisdiction of the Board under this part or unreasonably discriminate against that line in the distribution of traffic that is not routed specifically by the shipper.

(c) Except as provided in subsection (d) of this section and unless a rate is prohibited by a provision of this part, a rail carrier providing transportation subject to the jurisdiction of the Board under this part may establish any rate for transportation or other service provided by the rail carrier.

(d)(1) If the Board determines, under section 10707 of this title, that a rail carrier has market dominance over the transportation to which a particular rate applies, the rate established by such carrier for such transportation must be reasonable.

(2) In determining whether a rate established by a rail carrier is reasonable for purposes of this section, the Board shall give due consideration to—

(A) the amount of traffic which is transported at revenues which do not contribute to going concern value and the efforts made to minimize such traffic;

(B) the amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize the revenues from such traffic; and

(C) the carrier's mix of rail traffic to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues,

recognizing the policy of this part that rail carriers shall earn adequate revenues, as established by the Board under section 10704(a)(2) of this title.

(3) The Board shall, within one year after January 1, 1996, complete the pending Interstate Commerce Commission non-coal rate guidelines proceeding to establish a simplified and expedited method for determining the reasonableness of challenged rail rates in those cases in which a full stand-alone cost presentation is too costly, given the value of the case.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 809; amended Pub. L. 104-287, §5(22), Oct. 11, 1996, 110 Stat. 3390.)

PRIOR PROVISIONS

Prior sections 10701 and 10701a were omitted in the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Section 10701, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1371; Pub. L. 96-296, §13(a), July 1, 1980, 94 Stat. 803; Pub. L. 96-448, title II, §201(b)(1), (2), Oct. 14, 1980, 94 Stat. 1899, 1900; Pub. L. 97-261, §9(a), Sept. 20, 1982, 96 Stat. 1109; Pub. L. 103-180, §2(a), (b), (g), Dec. 3, 1993, 107 Stat. 2044, 2047, 2049, related to standards for rates, classifications, through routes, rules, and practices. See sections 10701, 13701, 13709, and 15501 of this title.

Section 10701a, added Pub. L. 96-448, title II, §201(a), Oct. 14, 1980, 94 Stat. 1898; amended Pub. L. 103-272, §4(j)(19), July 5, 1994, 108 Stat. 1369, related to standards for rates for rail carriers. See section 10701 of this title.

AMENDMENTS

1996—Subsec. (d)(3). Pub. L. 104-287 substituted “January 1, 1996” for “the effective date of this paragraph”.

EFFECTIVE DATE

Chapter effective Jan. 1, 1996, except as otherwise provided in Pub. L. 104-88, see section 2 of Pub. L. 104-88, set out as a note under section 701 of this title.

ABOLITION OF INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission abolished by section 101 of Pub. L. 104-88, set out as a note under section 701 of this title.

§ 10702. Authority for rail carriers to establish rates, classifications, rules, and practices

A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall establish reasonable—

DECLARATION OF POLICY

SEC. 101. (a) FINDINGS.—The Congress finds and declares that—

(1) Essential rail service in the midwest and northeast region of the United States is provided by railroads which are today insolvent and attempting to undergo reorganization under the Bankruptcy Act.

(2) This essential rail service is threatened with cessation or significant curtailment because of the inability of the trustees of such railroads to formulate acceptable plans of reorganization. This rail service is operated over rail properties which were acquired for a public use, but which have been permitted to deteriorate and now require extensive rehabilitation and modernization.

(3) The public convenience and necessity require adequate and efficient rail service in this region and throughout the Nation to meet the needs of commerce, the national defense, the environment, and the service requirements of passengers, United States mail, shippers, States and their political subdivisions, and consumers.

(4) Continuation and improvement of essential rail service in this region is also necessary to preserve and maintain adequate national rail services and an efficient national rail transportation system.

(5) Rail service and rail transportation offer economic and environmental advantages with respect to land use, air pollution, noise levels, energy efficiency and conservation, resource allocation, safety, and cost per ton-mile of movement to such extent that the preservation and maintenance of adequate and efficient rail service is in the national interest.

(6) These needs cannot be met without substantial action by the Federal Government.

(b) PURPOSES.—It is therefore declared to be the purpose of Congress in this Act to provide for—

(1) the identification of a rail service system in the midwest and northeast region which is adequate to meet the needs and service requirements of this region and of the national rail transportation system;

(2) the reorganization of railroads in this region into an economically viable system capable of providing adequate and efficient rail service to the region;

(3) the establishment of the United States Railway Association, with enumerated powers and responsibilities;

(4) the establishment of the Consolidated Rail Corporation, with enumerated powers and responsibilities;

(5) assistance to States and local and regional transportation authorities for continuation of local rail services threatened with cessation; and

(6) necessary Federal financial assistance at the lowest possible cost to the general taxpayer.

DEFINITIONS

SEC. 102. As used in this Act, unless the context otherwise requires—

(1) "Association" means the United States Railway Association, established under section 201 of this Act;

(2) "Commission" means the Interstate Commerce Commission;

(3) "Corporation" means the Consolidated Rail Corporation required to be established under section 201 of this Act;

presented to the Commission. The submission shall reflect evaluation of all responses and summaries of responses received, testimony at any public hearings, and the results of additional study and review. Within 30 days thereafter, the Board of Directors of the Association shall by a majority vote of all its members approve a final system plan which meets all of the requirements of section 206 of this title.

(d) REVIEW OF COMMISSION.—Within 30 days following the adoption of the final system plan by the Association under subsection (c) of this section and the submission of such plan to Congress under section 208(a) of this title, the Commission shall submit to the Congress an evaluation of the final system plan delivered to both Houses of Congress.

Plan evaluation,
submital to Con-
gress.

REVIEW BY CONGRESS

SEC. 208. (a) GENERAL.—The Board of Directors of the Association shall deliver the final system plan adopted by the Association to both Houses of Congress and to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Commerce of the Senate. The final system plan shall be deemed approved at the end of the first period of 60 calendar days of continuous session of Congress after such date of transmittal unless either the House of Representatives or the Senate passes a resolution during such period stating that it does not favor the final system plan.

(b) REVISED PLAN.—If either the House or the Senate passes a resolution of disapproval under subsection (a) of this section, the Association, with the cooperation and assistance of the Secretary and the Office, shall prepare, determine, and adopt a revised final system plan. Each such revised plan shall be submitted to Congress for review pursuant to subsection (a) of this section.

(c) COMPUTATION.—For purposes of this section—

- (1) continuity of session of Congress is broken only by an adjournment sine die; and
- (2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

JUDICIAL REVIEW

SEC. 209. (a) GENERAL.—Notwithstanding any other provision of law, the final system plan which is adopted by the Association and which becomes effective after review by the Congress is not subject to review by any court except in accordance with this section. After the final system plan becomes effective under section 208 of this title, it may be reviewed with respect to matters concerning the value of the rail properties to be conveyed under the plan and the value of the consideration to be received for such properties.

(b) SPECIAL COURT.—Within 30 days after the date of enactment of this Act, the Association shall make application to the judicial panel on multi-district litigation authorized by section 1407 of title 28, United States Code, for the consolidation in a single, three-judge district court of the United States of all judicial proceedings with respect to the final system plan. Within 30 days after such application is received, the panel shall make the consolidation in a district court (cited herein as the "special court") which the panel determines to be convenient to the parties and the one most likely to be able to conduct any proceedings under this section with the least delay and the greatest possible fairness and ability. Such proceedings shall be conducted by the special court which shall be composed of three Federal judges who shall be selected by the panel, except that none of the judges selected

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any such appeal within 7 days after the entry of such an appeal if it determines that such an appeal would not be in the interest of an expeditious conclusion of the proceedings and shall grant the highest priority to the determination of any such appeals which it determines not to dismiss.

TERMINATION OF RAIL SERVICE

SEC. 304. (a) DISCONTINUANCE.—Except as provided in subsections (c) and (f) of this section, (1) rail service on rail properties of a railroad in the region which transfers to the Corporation or to profitable railroads operating in the region all or substantially all of its rail properties designated for such conveyance in the final system plan, and (2) rail service on rail properties of a profitable railroad operating in the region which transfers substantially all of its rail properties to the Corporation or to other railroads pursuant to the final system plan may be discontinued to the extent such discontinuance is not precluded by the terms of the leases and agreements referred to in section 303(b)(2) of this title if—

(A) the final system plan does not designate rail service to be operated over such rail properties; and

(B) not sooner than 30 days following the effective date of the final system plan the trustee or trustees of the applicable railroad in reorganization or a profitable railroad give notice in writing of intent to discontinue such rail service on a date certain which is not less than 60 days after the date of such notice; and

(C) the notice required by paragraph (B) of this subsection is sent by certified mail to the Governor and State transportation agencies of each State and to the government of each political subdivision of each State in which such rail properties are located and to each shipper who has used such rail service during the previous 12 months.

(b) ABANDONMENT.—(1) Rail properties over which rail service has been discontinued under subsection (a) of this section may not be abandoned sooner than 120 days after the effective date of such discontinuance except as provided in subsections (c) and (f) of this section. Thereafter, except as provided in subsection (c) of this section, such rail properties may be abandoned upon 30 days' notice in writing to all those required to receive notice under paragraph (2)(C) of subsection (a) of this section.

(2) In any case in which rail properties proposed to be abandoned under this section are designated by the final system plan as rail properties which are suitable for use for other public purposes (including roads or highways, other forms of mass transportation, conservation, and recreation), such rail properties shall not be sold, leased, exchanged, or otherwise disposed of during the 180-day period beginning on the date of notice of proposed abandonment under this section unless such rail properties have first been offered, upon reasonable terms, for acquisition for public purposes.

(c) LIMITATIONS.—Rail service may be discontinued and rail properties may be abandoned under subsections (a) and (b) of this section notwithstanding any provision of the Interstate Commerce Act (40 U.S.C. 1 et seq.) or the constitution or law of any State or the decision of any court or administrative agency of the United States or of any State. No rail service may be discontinued and no rail properties may be abandoned pursuant to this section—

(1) after 2 years from the effective date of the final system plan or more than 2 years after the final payment of any rail service continuation subsidy is received, whichever is later; or

(2) if a shipper, a State, the United States, a local or regional transportation authority, or any responsible person offers—

(A) a rail service continuation subsidy which covers the difference between the revenue attributable to such rail properties and the avoidable costs of providing service on such rail properties plus a reasonable return on the value of such rail properties;

(B) a rail service continuation subsidy which is payable pursuant to a lease or agreement with a State, or a local or regional transportation authority, under which financial support was being provided at the time of the enactment of this Act for the continuance of rail passenger service; or

(C) to purchase, pursuant to subsection (d) of this section, such rail properties in order to operate rail service over such properties.

If a rail service continuation subsidy is offered, the government or person offering the subsidy shall enter into an operating agreement with the Corporation or any responsible person (including a government entity) under which the Corporation or such person (including a government entity) will operate rail service over such rail properties and receive the difference between the revenue attributable to such properties and the avoidable costs of providing service on such rail properties and the trustee of any railroad in reorganization shall receive a reasonable rate of return on the value of any rail properties for which a rail service is operated under such subsidy.

(d) **PURCHASE.**—If an offer to purchase is made under subsection (c) (2) (C) of this section, such offer shall be accompanied by an offer of a rail service continuation subsidy. Such subsidy shall continue until the purchase transaction is completed, unless a railroad assumes operations over such rail properties on its own account pursuant to an order or authorization of the Commission. Whenever a railroad in reorganization in the region or a profitable railroad gives notice of intent to discontinue service pursuant to subsection (a) of this section, such railroad shall, upon the request of anyone apparently qualified to make a purchase offer promptly make available its most recent reports on the physical condition of such property together with such traffic and revenue data as would be required under subpart B of part 1121 of chapter X of title 49 of the Code of Federal Regulations and such other data necessary to ascertain the avoidable costs of providing service over such rail properties.

49 CFR 1121.

(e) **ABANDONMENT BY CORPORATION.**—After the rail system to be operated by the Corporation under the final system plan has been in operation for 2 years, the Commission may authorize the Corporation to abandon any rail properties as to which it determines that rail service over such properties is not required by the public convenience and necessity. The Commission may, at any time after the effective date of the final system plan, authorize additional rail service in the region or authorize the abandonment of rail properties which are not being operated by the Corporation or by any other person. Determinations by the Commission under this subsection shall be made pursuant to applicable provisions of the Interstate Commerce Act (40 U.S.C. 1).

24 Stat. 379.

(f) **INTERIM ABANDONMENT.**—After the date of enactment of this Act, no railroad in reorganization may discontinue service or abandon any line of railroad other than in accordance with the provisions of this Act, unless it is authorized to do so by the Association and unless no affected State or local or regional transportation authority reasonably opposes such action, notwithstanding any provision of any other Federal law, the constitution or law of any State, or decision or order of, or the pendency of any proceeding before any Federal or State court, agency, or authority.



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Section 6. If, in a civil action in the supreme judicial or the superior court, or in the land court, to quiet or establish the title to land situated in the commonwealth or to remove a cloud from the title thereto, it is sought to determine the claims or rights of persons unascertained, not in being, unknown or out of the commonwealth, or who cannot be actually served with process and made personally amenable to the judgment of the court, such persons may be made defendants and, if they are unascertained, not in being or unknown, may be described generally, as the heirs or legal representatives of AB, or such persons as shall become heirs, devisees or appointees of CD, a living person, or persons claiming under AB. It shall be unnecessary for the maintenance of such action that the defendants shall have a claim or the possibility of a claim resting upon an instrument the cancellation or surrender of which would afford the relief desired; but it shall be sufficient that they claim or may claim by purchase, descent or otherwise, some right, title, interest or estate in the land which is the subject of the action and that their claim depends upon the construction of a written instrument or cannot be met by the plaintiffs without the production of evidence. Two or more persons claiming to own separate and distinct parcels of land in the same county by titles derived from a common source, or two or more persons having separate and distinct interests in the same parcel, may join as plaintiffs in any action brought under this section.

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Section 7. If in such action the court finds that actual service cannot be, or has not been, made upon a defendant, it may at the request of the plaintiff order notice of the action to be posted in a conspicuous place on the land or to be published in a newspaper within or without the commonwealth, or both, or to be given in such other manner as it considers most effectual, and may also require personal notice to be given. Notice given under this section shall be constructive service on all the defendants.

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Section 8. If, after notice has been given or served as provided in the preceding section and the time limited in such notice for the appearance of the defendants has expired, the court finds that there are or may be defendants not actually served with process within the commonwealth who have not appeared in the action, it may of its own motion, or on the representation of any party, appoint a guardian ad litem or next friend of any such defendant, and if any such defendants have or may have conflicting interests, it may appoint different guardians ad litem or next friends to represent them.

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Section 9. The cost of appearance of any such guardian ad litem or next friend, including compensation of his counsel, shall be determined by the court and paid by the plaintiff, against whom execution may issue therefor in favor of the guardian ad litem or next friend.

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Section 10. After all the defendants have been served with process or notified as provided in section seven and after the appointment of a guardian ad litem or next friend, if such appointment has been made, the court may proceed as though all defendants had been actually served with process. Such action shall be a proceeding in rem against the land, and a judgment establishing or declaring the validity, nature or extent of the plaintiff's title may be entered, and shall operate directly on the land and have the force of a release made by or on behalf of all defendants of all claims inconsistent with the title established or declared thereby. This and the four preceding sections shall not prevent the court from also exercising jurisdiction in personam against defendants actually served with process who are personally amenable to its judgments.

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